THE

Justice of the Peace,

AND

PARISH OFFICER

By RICHARD BURN, LL.D.

LATE CHANCELLOR OF THE DIOCESE OF CARLISLE.

THE TWENTY-FOURTH EDITION:
With CORRECTIONS, ADDITIONS, and IMPROVEMENTS.
The CASES brought down to the End of Trinity Term,
5 GEO. IV. 1824.
And the STATUTES to the End of 5 GEO. IV. 1824.

BY SIR GEORGE CHETWYND, BART. M.P.
BARRISTER AT LAW,
AND CHAIRMAN OF THE GENERAL QUARTER SESSIONS OF THE PEACE
FOR THE COUNTY OF STAFFORD.

Dr. Burn has great merit: He has done great service, and deserves great commendation.—*Per* Lord MANSFIELD C. J. Burr. S. C. 548.

IN FIVE VOLUMES.

VOL. I.

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1825.

TO THE

MAGISTRATES

FOR

THE COUNTIES OF

STAFFORD AND WARWICK,

THIS TWENTY-FOURTH EDITION

OF

DR. BURN'S JUSTICE OF THE PEACE

IS

MOST RESPECTFULLY INSCRIBED

BY THEIR

FAITHFUL AND OBEDIENT SERVANT,

GEORGE CHETWYND.



PREFACE

TO

THIS TWENTY-FOURTH EDITION.

THE favorable manner in which the Twenty-third Edition of Dr. Burn's "Justice of the Peace and Parish Officer," published in 1820, was received by the public, induced me, in compliance with the wishes and solicitations of many brother magistrates, to undertake another edition for the press. In endeavouring to execute this important task, I have availed myself of various suggestions for improvement; and had completed the MSS., inclusive of the Cases and Statutes, to the 24th March 1824, when the decease of my venerable Father (the late SIR GEORGE CHETWYND) took place, and opened to my view so extended a sphere of duties and occupations, that I felt it impossible without assistance, to complete my engagement within the time prescribed; I therefore sought for, and fortunately obtained a most able coadjutor in Mr. TYRWHITT, editor of "Dr. Burn's Ecclesiastical Law," and (in conjunction with Mr. Tyndale), author of that learned and laborious work, the "Digest of the Statutes," who has conducted the work from the above period to the time of publication. With Mr. Tyrwhitt I have enjoyed the pleasure and advantage of a daily correspondence; I have inspected every proof sheet; and my excel-

lent and highly respected friend, the Reverend JOHN OLDHAM, has again rendered his valuable assistance in revising the work, both in MSS. and in its progress through the press.

The general plan, adopted, and, I trust, approved, in the last edition, has been steadily kept in view, and acted upon in the present.

Some new titles, as (*e. g.*) "ADMIRALTY COURT," "STEALING DEAD BODIES," "INDEMNITY," "POLICE OF THE METROPOLIS," and many new Forms have been introduced. New Tables of Cases and Statutes, in the first, second, third, and fifth volumes, are prefixed to each respectively; and the similar tables in the fourth volume (containing title "POOR") have been corrected and revised. The Indexes are also much enlarged and improved. In fine, the work has received many important additions and improvements; nor has attention been wanting to the retrenchment of superfluous matter. Many former errors have been corrected, and on the whole, it is confidently hoped that the present edition will be found entitled to, at least, an equal share of approbation with its predecessor.

GEORGE CHETWYND.

GRENDON-HALL,
Near ATHERSTONE,
March 1st, 1825.

PREFACE

TO

THE FIRST EDITION.

THE Author proposeth in this book to render the laws relating to the subjects it treats of, a little more intelligible than hath hitherto been done.

The method he makes use of is various.

The first thing regarded is the order of *time*. Thus, in the poor laws: first is set forth the appointment of *overseers;* next the several branches of their duty, in finding *settlements* for the poor —— in removing them to such settlements —— in making *rates* for their relief —— in *relieving* and otherwise ordering them —— and, last of all, in *accounting* at the expiration of their office. —— Then again, in treating of *settlements*, it occurs, to consider distinctly, and as near to the said order as may be, ten different kinds of settlements —— by *birth* —— by the *parents'* settlement —— by *apprenticeship* —— by *service* —— by *marriage* —— by *inhabiting forty days after notice* —— by paying *parish rates* —— by serving a *parish office* —— by *renting* 10l. *a-year* —— and by a person's *own estate*. —— In like manner in treating of the *rates*, first is set forth the course of *laying the assessment* —— then the *allowance* thereof by the justices —— *publishing* the same in the church —— *appeal* against the rates at the sessions —— levying the same by *distress* —— and finally, *commitment*, where no distress can be had.

Thus, to exhibit another instance——In the article of the *Woollen Manufacture*, which makes up a considerable part of the justice of the peace his duty, and of the officers subordinate to him, there is such a number and variety of statutes, that authors are generally overwhelmed with them. To avoid which perplexity, the laws are here digested in order, according to the natural progress of that business; from the shearing of the sheep, to the exportation of the wool manufactured; under the several heads of *winding of wool* by the shearer —— laws to prevent its *exportation* —— *working* of cloth ——*fulling* ——*measuring*——*dyeing*—— *stretching*—— *dressing* —— *exporting*.

Where there is no priority in point of time; the next method is that of Lord *Coke*, to frame a definition which takes in the whole subject, and then explain the several parts of such definition in their order. Thus, *Grand larceny* is defined to be, *A felonious and fraudulent taking and carrying away by any person of the mere personal goods of another, above the value of* 12d. In the handling of which, the several branches of the definition are explained in the order as they stand; *viz. A felonious and fraudulent taking* —— *and carrying away* —— *by any person* —— *of the mere personal goods* —— *of another* —— *above the value of* 12d. Under which heads the general learning relating to that whole title is comprehended.

The like method is pursued in treating of the *commission of the peace*, the form of an *indictment*, the form of an *order of removal*, and other articles.

In general, it is provided, that one thing shall clear the way for another, and the subsequent paragraphs explain the preceding.

Under the influence of which conduct, the author hath attempted to bring together, under one general title, divers articles relating to the same subject, which in the common books are broken and detached under various separate titles; hoping thereby that what hath hitherto been thought introductory of

confusion, may tend to render the subject more perspicuous, in exhibiting the whole under one comprehensive view. Thus the laws relating to the *game*, which are above forty in number, and are interspersed in the common books under about thirteen different titles, are here digested under one general title *Game*, to which the reader shall have recourse for the knowledge of whatsoever belongeth to that subject. For example, if any person would be satisfied what penalty the law hath provided for *tracing hares in the snow;* by recurring to the general title concerning the game, he will find the game distinguished into three kinds, the *four-footed* game, the *winged* game, and the game of *fish:* the *four-footed* game are distributed into the several species of *deer*, *hares*, and *conies;* under which head concerning *hares*, he will readily find what is desired. In like manner, the *winged* game are subdivided into several branches, concerning *hawks* and *hawking*—— *swans*——*partridges and pheasants*——*pigeons*—— *wild ducks, wild geese, and other water-fowl*——*grouse or moor-game*——*herons*—— and *other fowl;* each of which have their peculiar laws.

In these large comprehensive titles, care is likewise taken, to be as particular as may be without injuring the connection in the statutes, by inserting the whole law by itself, relating to each separate article. The benefit of which will appear by the following instance: If a person would know what number of horses or beasts in a cart or waggon are allowed by the statutes for the preservation of the roads; let him take what treatise at present he pleases concerning the highways, he must read over the whole, before he shall be sure that he hath found all which the law hath enacted concerning the same; and such is often the inaccuracy and confusion, that when he hath perused the whole, perhaps he may be still to seek. For as to this instance before us, there have been regulations made concerning the same, by ten different acts of parliament at very different times. Before he can have any competent knowledge thereof, he

must lay all these ten acts together; and when he shall have done this, he will find amongst them so many repeals, and revivals, and explanations, and amendments, that it will even then be no easy matter to conclude with certainty how the law doth stand as to that article. To spare the reader all which trouble, the author hath in this, and all other the like instances, laid the whole law together relating thereunto, or at least all that hath occurred to him, or which he hath thought it material to insert. So that the reader may receive satisfaction in a very small compass, as to what he shall be inquiring about; or at least he may be satisfied in this, that if he doth not find it there, he need not seek for it elsewhere in the book. *

And by this method of bringing together into one general title, all those separate distinct titles, which have a mutual relation to and dependance upon each other, the author hath avoided one great inconvenience, of referring the reader from one title to another, and from that other back again to the first, and (which is not unusual in books of the like kind,) perhaps losing the thing to be treated of betwixt them.

Upon which account also, where one law occurreth under two different titles, it is usual with him to insert the same under both those titles; that so the reader's attention may not be interrupted, by sending him to search other titles, and from those perhaps others again, which have no principal relation to the matter he hath in hand.

Also, upon another account, he hath sometimes made use of more words than otherwise he would have done, namely, to avoid the frequent repetition of the term *&c.* which is a vague expression, and apt to create an uneasiness in the reader's mind, for that he cannot be satisfied from thence how much, or how little, is intended to be understood.

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* At present these acts are reduced into two general acts, one for turnpike roads, the other for highways not being turnpike.

He hath also been somewhat large in the matter of *precedents* under divers titles; and hath endeavoured to bring them much nearer to the statutes upon which they ought to be formed, than usually hath been done.

For all which enlargements, he hath the more space allowed to him, for that he hath not thought it necessary (as others have done) to take up near one-fourth part of the book by inserting *Blackerby's* Justice at the end of it, by way of Index; hoping that the method he hath pursued will render every thing of that kind impertinent and useless.

THE MATERIALS which the author hath made use of are chiefly of four kinds —— The *statutes* at large —— The several treatises concerning the *pleas of the crown* —— the *reports* of cases adjudged in the court of king's bench —— and the books concerning the *office of a justice of the peace*.

As to the *statutes* at large, or acts of parliament; the author has by no means thought himself at liberty, as Mr. *Dalton* and others have done, to deliver the import thereof in his own words; but hath constantly abridged the act in the words of the act itself, leaving out as little as possible which may seem any way material. And to each distinct clause, he hath annexed the interpretation thereof, where the same hath been determined in the court of king's bench, or expounded by other good authority.

The treatises concerning the *pleas of the crown*, are those of *Stanford*, *Coke*, *Hale*, and *Hawkins*. Of the first of these the author hath made little use, further than as he is adopted by the other three. As to which three great authorities, where the law hath been declared by Lord *Coke*, and not controverted by any other, nor altered since his time by any act of parliament, or judicial determination, the author hath given to him the preference. And where any of these differeth from the other, he hath noted the difference.

In citing of Mr. *Hawkins*, he hath not thought it

allowable, as is usual with others, to omit the several degrees of caution and assent, with which he delivereth his opinion; as, *it seemeth*, or *it hath been said by some*, or *it seemeth to be the better opinion*, or *it seemeth to be agreed*, and the like; which are by no means arbitrary words without much meaning, but are inserted by him with the utmost deliberation and judgment.

As to the books of *reports;* where the cases therein have been considered by Mr. *Hawkins*, and the other learned persons before-mentioned, the author hath judged it very proper to leave the matter there as settled by them. As to the rest, he hath by no means thought himself of ability to proceed in Mr. *Hawkins*'s manner by laying together all the reports on the same subject, and thereupon extracting an opinion out of the whole; but hath inserted the same at large, or what he hath thought most material thereof, and left the determination thereupon to the reader's better judgment.

And here it may be requisite, that the reader be admonished, not to expect that the book shall be more perfect than the materials of which it is composed. All the books of reports are not of equal authority. Some, as those of *Keble*, *Salkeld*, Lord *Raymond*, and many others, are approved or allowed by the Judges: others, which are perhaps not of less internal authority, have not received that sanction. Such, for instance, are those of Lord *Coke*. During the greatest part of His present Majesty's reign, no authentic collection of Reports hath been published of cases adjudged in matters relating to the subjects of this book. Herein the author could do no otherwise than make use of the materials he hath. Such are, particularly, *Andrews' Reports*, and two volumes of *Sessions Cases* published without the author's name. Of these, it may be observed, that in the main they do agree very well with books of good authority, where they happen to report the same cases; and have no appearance of wilful falsification in

cases not reported elsewhere. But for these, or any other, the author himself voucheth not: And, as he doth not add to their credit, so he doth not detract from it; but leaveth every author (as he needs must) to answer for himself. For he hath made it an invariable rule, upon all occasions, to cite his authorities, what such soever they be; and, in all material instances, in the very words of the original authors: that so, what may be of good authority in itself, shall not be rendered less so by his handling of it. And where no authority is alleged, he desires the reader will look upon it as such, namely, as having no authority; the same being nothing else but the author's own private observations, which are submitted to every reader's judgment, to approve or reject as he shall see cause.

The books of authority concerning the *office of a justice of the peace*, are those of *Fitzherbert*, *Crompton*, *Lambard*, and *Dalton;* the last of which was published in the reign of King *James* the First; since which time no book under that title hath been allowed as sufficiently authentic. And even the additions which have been made to *Dalton* since his death, seem to have no better claim to an uncontroulable authority, than other collections which have not obtained it. And *Dalton* himself is much injured in the modern editions in like manner, as was observed before of Mr. *Hawkins*, by delivering that as absolute, which Mr. *Dalton* published under the several degrees of assent or doubtfulness before mentioned; and which the author, in justice to Mr. *Dalton*, hath restored.

Where *Dalton* hath adopted *Lambard*, *Crompton*, and *Fitzherbert* (which he doth most frequently in their own words), the author hath thought it sufficient to cite *Dalton*'s single authority. And generally, in all other cases, where authors are agreed, he hath judged it unnecessary to allege more than one or two good vouchers.

Concerning the other books of this kind, which have been published since *Dalton*'s time, it is un-

necessary to enlarge; since of the most of them the author hath made no use, and of the rest very sparingly; and he will not seek to recommend his own book, by finding fault with others before him.

ORTON, WESTMORLAND,
Sept. 29. 1754.

ADVERTISEMENT

CONCERNING

THE FIFTEENTH EDITION.

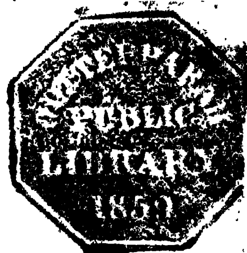
WHAT alterations have been necessary to be made from time to time, since the first publication of this book, may be easily conceived from the variety of materials, which have been introduced from the Reports of Cases adjudged in the courts of Westminster-hall, and the Statutes enacted during that period.

When this book was first published, in the year 1754, there had been few Reports adjudged in the reign of king George the First, and almost none in the reign of king George the Second. But now this deficiency hath been abundantly supplied by a greater number of Reports of Cases, determined in matters subject to the jurisdiction of the justices of the peace, than had been in the whole period before that time, from the first institution of the office of that magistrate.

The Statutes, or acts of parliament, which have been made during the said time, connected more or less with the office of a justice of the peace, are in number above three hundred; besides almost half as many more that have been repealed, superseded, or permitted to expire.

By the means of which statutes, so many new matters are in every session of parliament brought under the jurisdiction of these justices, and so many alterations are made in subjects of which they before had cognizance, that every new edition, in order to keep pace with the law, is in effect a new book. And this is unavoidable. To publish those alterations separately, in an annual appendix, is a work of more

difficulty than may be at first apprehended. For to effect this to any sufficient purpose, many titles must be taken in pieces, and wholly new modelled; sometimes one act of parliament breaks into several different titles, all of which must be surveyed, and rendered consistent with each other; and new titles frequently arise upon new emergencies. These alterations and additions in any one year would increase to a volume of no inconsiderable dimensions, and in two or three years' time would be productive of infinite confusion; and, notwithstanding all reasonable attention that might be employed, the book and the appendixes, and the several appendixes one with another, would be at variance. The best appendix that the author can imagine is, the statutes at large every year, so far as justices of the peace are concerned therein; which statutes, as no acting justice ought to be without, this would therefore, upon that account, create unto him no additional expence.



INTRODUCTION,

CONSISTING OF

TWO PARTS;

CONTAINING

I. *Certain Abbreviations made use of in this Work.*

II. *Some general Rules to be observed in the Construction of Statutes or Acts of Parliament.*

I. *Certain Abbreviations made use of in this Work.*

In order to keep the book within a reasonable compass, the following *abbreviations* are made use of.

1. The word *justice* is always to be understood to mean *justice of the peace*, when not otherwise expressed. **Justice.**

2. The words *one justice* shall be understood to signify *one or more justices:* so that what is directed to be done by one, shall not be intended thereby to exclude others from joining with him. **One justice.**

3. In like manner, *two justices*, when not otherwise expressed, shall be understood to signify *two justices or more.* **Two justices.**

4. So also a conviction on the oath of *one witness*, shall be understood to denote *one witness or more.* **One witness.**

5. And *two witnesses* shall denote *two or more witnesses.* **Two witnesses.**

6. (1 Q.) shall be understood to signify *one whereof is of the* Quorum. **Quorum.**

7. The *justices in sessions* shall signify the said justices, or *the major part of them.* **Majority.**

8. The word *sessions* shall denote *the general quarter sessions*, if not otherwise expressed. **Sessions.**

9. The word *warrant* shall always signify *warrant under hand and seal*, where not expressed otherwise. **Warrant.**

10. Judges or justices of *assize* shall be understood to signify also those of *Nisi Prius, Oyer and Terminer, and general gaol delivery.* **Judge of assize.**

Mayor. 11. The word *mayor* shall always be understood to imply *bailiffs and other chief officers in corporations*, by what appellation soever dignified.

Constable. 12. The word *constable* shall always be understood to imply *tythingmen, borsholders, headboroughs, and other peace-officers* required to execute the justice's warrants.

Overseer. 13. The word *overseer* shall be understood to mean *overseer of the poor*, where not expressed otherwise.

Poor. 14. Where a penalty, or part thereof is expressed to be given to the *poor*, that shall be always understood to denote *the poor of the parish where the offence was committed*, if not otherwise limited.

Penalty. 15. Where a penalty is to be recovered before the justices of the peace, it is thought indispensable to insert particularly the manner of recovering the same; but where it is to be sued for in any of his majesty's courts of record at *Westminster*, it is judged not necessary to set forth the special method of procedure there: and generally, where it is expressed, that a person shall do, or not do such a thing, on pain of such a sum, without more, it shall be understood that such penalty is not recoverable before the justices of the peace, but only in the courts at *Westminster*.

Overplus. 16. In all cases of *distress and sale*, it shall be understood that the *overplus* must be returned to the owner, after the sum or sums to be thereout deducted shall be satisfied and paid.

Lands. 17. *Lands* shall be understood to stand for *lands, tenements, and hereditaments*.

Transportation. 18. Where *transportation* is directed for any offence, it shall always be understood, *that if the offender shall return before the time limited, he shall be guilty of felony without benefit of clergy*.

Blank spaces. 19. In the blank spaces for the names in the precedents, instead of inserting initial letters arbitrarily, it is thought it may be some help to the memory, that *A. O.* shall signify the offender, *A. I.* the informer, *A. W.* the witness, *J. P.* the justice of the peace, and the like.

Figures. 20. Also for brevity's sake, sums of money and other numbers are usually expressed by figures, and not in words at length; but it is to be remembered, that in the forms of warrants, convictions, and other proceedings before the justices, they ought to be expressed in words at length, and not in figures.

Continuance of statutes. 21. Where a statute is said to be in force until such a day, month, and year, &c. it shall always be understood to imply, *and from thence to the end of the then next session of parliament.*

Citing of statutes. 22. In the statutes made in the reign of the late King *William*, it is thought not necessary upon all occasions to

say *William the Third*, since there are no printed statutes in the reigns of *William the First and Second*.

Nor is it thought necessary in such statutes to add the name of Queen *Mary* to that of King *William*; but it is judged sufficient for the understanding thereof, to quote the statutes in this manner, *viz.*

1 *W. sess.* 2. *c.* 6. § 3. to signify the statute made in the parliament holden in the first year of the reign of King *William* the Third and Queen *Mary*, the second session thereof, chapter the sixth, section the third.

23. Abbreviations in the names of books cited as authorities, or occasionally noticed, are explained in the annexed Table, and the Courts in which the several cases were adjudged, to wit, the Court of Exchequer, Exchequer Chamber, King's Bench, Common Pleas, Chancery, and Old Bailey, are generally expressed thus: — Exch.; Exch. Cham.; K. B.; C. P. or C. B.; Chanc.; O. B.; and the terms, namely, Hilary, Easter, Trinity, and Michaelmas, by the initial letters *H. E. T.* and *M.*

The following Abbreviations are also made use of: —

Add.	Addenda.
Cor.	Coram.
G. B.	Great Britain.
G. 3.	His late Majesty George the Third.
G. 4.	His present Majesty.
H. M.	His Majesty.
Inh.	Inhabitants.
Just.	Justice or Justices.
R. A.	Rule Absolute.
R. D.	Rule Discharged.
R. N.	Rule Nisi.
R. R.	Rule Refused.
S. C.	Same Case.
Sitt.	Sittings.
Stat.	Statute.
U. K.	United Kingdom.
V.	Versus.

II. *Some general Rules to be observed in the Construction of Statutes or Acts of Parliament.*

To avoid repeating the same observations some hundreds of times, it is thought proper to premise the following general rules to be observed in the construction of statutes or acts of parliament.

How far an affirmative repealeth an affirmative statute.

1. Regularly a statute in the affirmative doth not repeal a precedent affirmative statute. 11 *Rep.* 61.

But if the latter be contrary to the former, it amounteth to a repeal of the former. 1 *Ld. Raym.* 160.

How far an affirmative statute altereth the common law.

2. A statute made in the affirmative, without any negative expressed or implied, doth not take away the common law; and therefore the party may wave his benefit by such statute, and take his remedy by the common law. 2 *Inst.* 200.

Repealing a repealing statute.

3. By repealing of a repealing statute, the first statute is revived. *Readings upon the statutes.* Parl. *

Special power to be pursued.

4. Regularly, where an act of parliament giveth a power or interest to one person certain, by this express designation of one, all others are excluded. 11 *Rep.* 59. 64.

Power to administer an oath.

5. In all cases, where justices may take examinations, or other accusation or proof, though the statute doth not expressly set down that it shall be upon oath, yet it shall be intended that it shall be upon oath. *Dalt. c.* 115.

In what case the sessions may execute the power given to two justices.

6. Generally it is holden, that where a statute appoints a thing to be done by one or more justices without giving any appeal to the sessions; there the justices in sessions may do that thing: but where an appeal is given to the sessions, the justices in sessions cannot proceed originally therein, because that method would take away the power of appealing.

How far an indictment will lie, where another method of prosecution is appointed.

7. Where a statute makes a new offence, which was no way prohibited by the common law, and appoints a particular manner of proceeding against the offender, as by a commitment, or action of debt, or information, without mentioning an indictment; it seems to be settled at this day, that it will not maintain an indictment, because the mentioning the other methods of proceeding only, seems impliedly to exclude that of indictment: yet it hath been adjudged, that if such statute gave a recovery by action of debt, bill, plaint, information, *or otherwise*, it authorises a proceeding by way of indictment. 2 *Haw. c.* 25. § 4.

And if there be a prohibitory clause in the act, the offender may be indicted upon the prohibitory clause, notwithstanding the penalty: But otherwise it is, where the act is not prohibitory, but only inflicts the forfeiture, and specifies the remedy. 2 *Hale*, 171. 1 *Burr.* 543.

But where the offence was antecedently punishable by a common law proceeding, and a statute prescribes a particular remedy by a summary proceeding; there either method may be pursued, and the prosecutor is at liberty to proceed either at common law or in the method prescribed by the statute: because in that case the sanction is cumulative, and doth not exclude the common law proceeding. 2 *Burr.* 803.

Where no method of prosecution is appointed.

8. But every contempt of a statute is indictable where no other punishment is limited. 1 *Haw. c.* 22. § 5.

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* And if an act of parliament be revived, all acts explanatory of that so revived, are revived also. 2 *Burr.* 747. If a statute expire, and afterwards be revived again by another statute, the law derives its force from the first. 4 *T. R.* 109.

Where the defendant may be prosecuted both by the king, and the party grieved.

9. And wheresoever an act of parliament doth generally prohibit any thing, the party grieved shall not only have his action for his private relief, but the offender shall be punished at the king's suit, for the contempt of the law. 2 *Inst.* 163.

In what time prosecution shall be on penal statutes.

10. All actions, indictments, or informations, on penal statutes, for any forfeiture limited to the king, shall be brought within two years after the offence committed; if limited to the king and prosecutor, then within one year; and if it is not sued for in that one year, then the king may sue for the same within two years, after the expiration of that one year, and not otherwise. 31 *El. c.* 5. § 5. That is to say, unless where it is otherwise specially directed by subsequent statutes. *

Statutes not in the name of the whole legislature.

11. Many ancient statutes are penned in the form of charters, ordinances, commands, or prohibitions from the king, without mentioning the concurrence of either lords or commons; yet inasmuch as they have always been acquiesced in as unquestionably authentic, this establishes and confirms their authority, and the defect is salved by such universal reception. *Hawkins's preface to the Statutes.*

Preamble.

12. The preamble or rehearsal of a statute is deemed true; and therefore good arguments may be drawn from the preamble. 1 *Inst.* 11. But the preamble shall not restrain the operation of the enacting part; as where the preamble reciteth only a particular inconvenience, this shall not hinder a subsequent enacting clause from being understood in that more general sense which the words would otherwise and of themselves import, so as to take in other inconveniencies of the like kind, although not specified in the preamble. 8 *Mod.* 144. 1 *P. Wm.* 320. *Lofft*, 782.

May do such a thing, how to be understood.

13. Where a statute directs the doing of a thing, for the sake of justice, or the public good, the word *may* is the same as the word *shall*: as where the statutes of the 13 & 14 *C.* 2. *c.* 12. enacts that the overseers may make a rate to reimburse the constables, this is construed they *shall*; for they are compellable so to do. 2 *Salk.* 609. (†)

Court of record.

14. Where a statute directs a penalty to be recovered *in any court of record*, this shall not be intended of the quarter sessions, unless it be specially named in such statute; but only of the courts of record at *Westminster*. 6 *Rep.* 19. 20. 2 *Hale*, 29. 30.

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* Where a statute limits a proceeding against a party to six months, a year, &c. after the act done; the day, on which the act was done, is to be reckoned in the six months, year, &c. 2 *Doug.* 463.

† In *Rex* v. *The Bailiffs of Eye. H.* 1 & 2 *G.* 4. 4 *B. & A.* 271., the words "*it shall be lawful*," come under consideration as occurring in one of their bye-laws; on which *Abbott* C. J. observes, The words are, "*that it shall be lawfu for the bailiffs, &c. to admit.*" Those words clearly give to the bailiffs a discretionary power to admit the persons who have the qualifications therein mentioned, but they by no means make it imperative on them so to do.

Higher courts not intended, where the inferior are first mentioned.

15. It is a general rule in the construction of statutes, that where things of an inferior degree are first mentioned, those of a higher dignity shall not be included under general subsequent words; as where a statute speaks of indictments to be taken before justices of the peace, or *others having power to take indictments*, it shall be understood only of other inferior courts, and not of the king's bench, or other courts at *Westminster*. 2 *Rep*. 46. 2 *Haw*. *c*. 27. § 124.

Power to convene the parties.

16. Where a statute gives power to the justices, to require any person to do a thing, as to take the oaths, the law implicitly gives them power to issue their precept to have the body before them: for when the law granteth any thing to any one, that also is granted, without which the thing itself cannot be: and it is against the office of the justices, and the authority given them by the law, that they shall go and seek the parties. 12 *Rep*. 130. 131.

Necessity of summoning the party.

17. Where a statute gives power to the justices of the peace, to hear and determine an offence in a summary way, it is necessarily implied, and supposed, as a part of natural justice, that the party be first cited, and have opportunity to be heard and answer for himself. 1 *Haw*. *c*. 64. § 60.

Two justices to be both together.

18. Where an act of parliament gives power to two justices finally to hear and determine an offence, it is necessarily supposed, that they shall be both together, or which is the same thing in other words, that they shall hold a special sessions for that purpose. And the like is, when they are to do any other *judicial* act, as to make an order of bastardy, or adjudge the settlement of a poor person. For it is unknown to the laws of *England*, that two persons shall act as judges in the same cause, when at the same time one of them is in one part of the country, and the other in another.

Informers' oath.

19. Where a statute appoints a conviction to be on the *oath of one witness*, this ought not to be by the single oath of the informer; for if the same person shall be allowed to be both prosecutor and witness, it would induce profligate persons to commit perjury for the sake of the reward. 2 *Ld. Raym*. 1545.

Confession.

20. Where a statute directeth, that a person shall be convicted of an offence, upon the *oath of one or more witnesses*, and saith nothing of the *confession* of the party; yet if the offender shall before the justice confess the offence, he may be convicted upon such confession: for confession is stronger evidence than the oath of witnesses. *Dalt*. 109. 162. 1 *Str*. 546.

Discretionary power.

21. Where an act of parliament gives power to the justices of the peace, to take order in any matter *according to their discretions*; this shall be understood, according to the rules of reason, law, and justice, and not by private opinion. 5 *Rep*. 100. See 8 *Howell's St. Tri*. 55. (*notis*.)

England includes Wales.

12. In all cases where *the kingdom of England*, or *that part of* Great Britain *called* England, hath been or shall be mentioned in any act of parliament, the same shall be deemed to comprehend *the dominion of* Wales, *and town of* Berwick-upon-Tweed. 20 *G.* 2. *c.* 42. § 3.

Twelve months.

23. It may be laid down as an invariable rule, that *the law favours liberty:* so that in the construction of a penal statute, where the interpretation is dubious, that sense must be pursued (all other things being equal) which is more beneficial to the subject, or the party suffering. Thus, where an act directs, that the justices shall commit an offender to prison for 12 *months*, the justices may not alter the words, and commit him for *a year;* for in this respect, 12 months and one year are not the same: but the months must be computed at 28 days to the month, and not as calendar months, unless it be so expressed in the act.

Quakers' affirmation.

24. In all cases wherein, by any act of parliament, an oath shall be allowed or required; the solemn affirmation of quakers shall be allowed instead of such an oath, although no particular or express provision be made for that purpose in the said act. 22 *G.* 2. *c.* 46. § 3.

But no quaker shall, by virtue hereof, be qualified or permitted to give evidence in any *criminal* cause, or serve on a jury, or bear any office or place of profit in the government. § 37.

Forfeiture.

25. To say that a person shall *forfeit* generally, or that he shall *forfeit to the king*, is all one; for the king shall have every forfeiture not otherwise limited. 11 *Rep.* 60.

Except where a forfeiture is *given in lieu of property and interest;* for there it shall go to the party injured. 1 *Roll. Rep.* 90.

For wheresoever a statute giveth a forfeiture or penalty, against him which wrongfully detaineth or dispossesseth another of his duty or interest; in that case, he that hath the wrong shall have the forfeiture or penalty, and shall have an action for the same upon the statute, and the king shall not have the forfeiture in that case. 1 *Inst.* 159.

Fine and ransom.

26. Where a statute saith, that such a person shall pay *fine and ransom* to the king, in legal understanding, such fine and ransom are all one: for if they were divers, then should the party pay two sums, one for the fine, and another for the ransom; which was never done. 1 *Inst.* 127.

At the king's pleasure.

27. Acts of parliament that speak of fines or ransoms *at the king's pleasure*, are always to be understood of the king in his courts by his justices. 1 *Hale*, 375.

Where a power of commitment is implied.

28. It is said, that wheresoever a justice of the peace is empowered, by any statute, to bind a person over, or to cause him to do a certain thing, and such person being in his presence shall refuse to be bound, or to do such thing;

the justice may commit him to the gaol, to remain there till he shall comply. 2 *Haw.* c. 16. § 2.

Imprisonment, when.

29. When a statute appoints imprisonment, but limits no time when; it shall be immediately. 8 *Rep.* 119.

Imprisonment, how long.

30. When a statute appoints imprisonment, but limits no time how long; the prisoner in such case must remain at the discretion of the court. *Dalt.* 410.

Commitment to the house of correction, for what time.

31. Where any offender shall by a justice of the peace be committed to the house of correction for an offence cognizable before him out of sessions, and the time and manner of punishment is not by law expressly limited; he may commit him to the house of correction, *there to be kept to hard labour until the next general or quarter sessions, or until discharged by due course of law.* 17 G. 2. c. 5. § 32.

atute making ı offence elony.

32. Wherever a statute makes any offence *felony*; it incidently gives it all the properties of felony at common law. 1 *Haw.* c. 38. § 18.

fisprision.

33. Therefore an act of parliament that makes an offence felony, doth consequently introduce the punishment of concealing, that is, misprision of felony; and every offence made felony by act of parliament, includeth misprision. 1 *Hale*, 708.

nfants.

34. An act making a new felony, extendeth not to infants under 14 years of age: but if they be of that age it binds them. 1 *Hale*, 706. 1 *Russ.* 8.

ife and ember.

35. Not only those crimes which are made felonies by the express words of any statute, but also those which are decreed to have or undergo *judgment of life and member*, do become felonies thereby, whether the word felony were mentioned or not. 1 *Haw.* c. 40. § 1.

ody and oods.

36. But an offence shall never be made felony, by the construction of any doubtful and ambiguous words of a statute; and therefore if it be only prohibited under pain of *forfeiting body and goods*, or of being *at the king's will for body, lands, and goods*, it shall amount unto no more than a high misdemeanor, punishable by imprisonment or the like. *Id.* § 2.

enefit of ergy.

37. All felonies by the common law have the benefit of clergy; therefore where a statute enacts a felony, and says, the offender shall *suffer death*, clergy lies notwithstanding, and is never ousted without express words. 3 *Inst.* 73. 2 *Haw.* c. 33. § 24.

rfeiture of wer,

38. Saving of *dower* in a statute making an offence felony, is superfluous; for by the 1 *Ed.* 6. c. 12. § 17. dower is not lost by the felony of the husband.

osts.

39. Where any complaint shall be made before a justice, and a warrant or summons shall issue in consequence thereof; the justice, upon hearing and determining the matter, may award *costs* to either party: but if the conviction be upon a penal statute, and the penalty amounts to 5*l.* or upwards,

the costs shall be deducted out of the penalty. 18 *G.* 3. *c.* 19.

Damages.

40. Upon an indictment or other criminal prosecution, no *damages* can be given to the party grieved: but it is every day's practice in the court of King's Bench, to induce defendants to make satisfaction to the prosecutors, by intimating an inclination on that account to mitigate the fine due to the king. 2 *Haw.* *c.* 25. § 3.

Treble damages.

41. Where a statute gives *treble damages*, the justices are not to assess the damages, and then treble them; but the jury ought to find the damages, and then the justices are to treble them. *Cro. Car.* 449.

Distress and sale.

42. In all cases where a justice is required by any act of parliament, to issue a warrant of distress for the levying of any penalty inflicted, or any sum of money directed to be paid by such act: it shall be lawful for such justice granting the warrant, therein to order and direct the goods distrained to be sold within a certain time to be limited in such warrant, so as such time be not less than four days, nor more than eight days, unless such penalty or sum of money, together with reasonable charges of taking and keeping the distress, be sooner paid. And the officer making such distress, may deduct the reasonable charges of taking, keeping, and selling the said distress; and the overplus (if any) shall be returned to the owner on demand. (Except only in cases of distress for quakers' tithes and church-rates.) 27 *G.* 2. *c.* 20.

Second offence.

43. An act inflicting a penalty for a *second offence*, must always be understood, after conviction and judgment for the first offence; and the second offence must be committed after the first conviction, and judgment thereupon given: for it doth not appear to be an offence, until judgment by proceeding of law be given against the offender. 2 *Inst.* 468.

And the indictment for a second offence, must recite the record of the first conviction; and upon the evidence, the *record* of the first conviction must be proved: but the *matter* of the first conviction, shall never be re-examined, but must stand for granted. 1 *Hale*, 686.

Commencement of acts of parliament.

44. By stat. 33 *G.* 3. *c.* 13. The clerk of the parliaments shall indorse on every act of parliament, immediately after the title, the day, month, and year, when the same shall have received the royal assent; and such indorsement shall be taken to be a part of such act, and to be the date of its commencement, where no other commencement shall be therein provided.

48 G. 3. c. 106

By stat. 48 *G.* 3. *c.* 106. Where any bill shall be introduced into any session of parliament, for the continuance of any act which would expire in such sessions, and such act shall have expired before the bill for continuing the same shall have received the royal assent, such continuing act shall be

deemed to have effect from the date of the expiration of the act intended to be continued, except it shall be otherwise provided in such continuing act. But nothing herein contained shall extend to affect any person with any punishment, penalty or forfeiture, by reason of any thing done, or omitted to be done contrary to the provisions of the act continued, between the expiration of the same, and the date at which the act continuing the same shall receive the royal assent.

4 G. 4. c. 35.

By stat. 4 *G.* 4. *c.* 35. Trustees and commissioners under acts of parliament may meet to carry such acts into execution although they have not met according to the direction of such acts.

Table and Explanation

Of Abbreviations of the Names of Books, cited as Authorities, or referred to, in this Work.

Al.	Aleyn's Reports.
Amb.	Ambler's Reports.
Andr.	Andrew's Reports.
Anon.	Anonymous.
Anst.	Anstruther's Reports.
Archbold's Crim. Pl. & Ev.	Archbold's Criminal Pleading and Evidence.
Ass. or *Lib. Ass.*	Liber Assisarum.
Atk.	Atkyns's Reports.
Bac. Abr.	Bacon's Abridgement, edit. of 1798.
Barl.	Barlow's Justice.
Barnard.	Barnardiston's Reports.
Barnes.	Barnes's Notes of Practice.
B. & A.	Barnewall & Alderson's King's Bench Reports.
B. & C.	Barnewall & Creswell's King's Bench Reports.
Bayl.	Bayley on Bills, 4th edition.
Bing.	Bingham's Common Pleas Reports.
Barringt.	Barrington's Observations on the Statutes.
Blackerby.	Blackerby's Justice, edit. 1749 and 1734.
Blac. Com.	Blackstone's Commentaries, edit. 1799.
Blac. Rep.	Sir William Blackstone's Reports.
H. Blac.	Henry Blackstone's Reports.
Bos. & Pull.	Bosanquet & Puller's Reports in Common Pleas.
Bosc.	Boscawen on Convictions.
Bott.	Bott's Poor Laws, by Const.
Bott. cont.	Bott's Poor Laws continued to Hil. T. 1814.
Bradby.	Bradby on Distresses.
Brod. & Bing.	Broderip and Bingham's Reports, C. P.
Bro. Ab.	Brook's Abridgement.
Bro.	Brown's Chancery Cases.
Brownl.	Brownlow & Goldesborough's Reports.
Buck.	Buck's Cases in Bankruptcy.
Bull. N. P.	Buller's Nisi Prius.
Bulst.	Bulstrode's Reports.
Burn's Eccl. L.	Burn's Ecclesiastical Law, 8th edition by Tyrwhitt.
Burr.	Burrow's Reports.
Burr. S. C.	Burrow's Settlement Cases.
Cald.	Caldecott's Reports of Settlement Cases.
Caldw. on Arbit.	Caldwell's Treatise on Arbitrations, 1817.
Calth.	Calthorp's Reports.
Campb.	Campbell's Nisi Prius Reports.
Can.	Canons of the Church, made in 1603.
Carth.	Carthew's Reports.
Cas. temp. Hardw.	Cases tempore Hardwicke, in King's Bench.

Cas. temp. Talb.	Cases tempore Ld. Chancellor Talbot.
Cha. Ca.	Chancery Cases.
Chitt. Crim. L.	Chitty's Criminal Law.
Chitty's G. L.	Chitty on the Game Laws, &c.
Chitty's R. M.	Chitty on the Rights of Manors.
Chitt. Rep.	Chitty's Reports.
Christian's G. L.	Christian on the Game Laws.
Clap. Sess. L.	Clapham's Points of Sessions Law, 1818.
Clayt.	Clayton's Reports.
Co. Ent.	Coke's Entries.
Co. Lit.	Coke upon Littleton.
Comb.	Comberbach's Reports.
Com. Par. Off.	Complete Parish Officer.
Com.	Comyns's Reports.
Com. Dig.	Comyns's Digest.
Cooke's B. L.	Cooke's Bankrupt Laws.
Cowp.	Cowper's Reports.
Cro. Car.	Croke's Reports temp. Charles.
Cro. Eliz.	Croke's Reports temp. Eliz.
Cro. Jac.	Croke's Reports temp. James.
Cromp.	Crompton's Justice of the Peace.
Cro. Cir. C.	Crown Circuit Companion, edit. of 1811.
Dalt.	Dalton's Justice, edit. of 1746.
D'Anv.	D'Anver's Abridgement.
Degge.	Degge's Parson's Counsellor.
Deh.	Dehany's Turnpike Acts.
Dickenson.	Dickenson's Justice, edit. of 1813.
D. & St.	Doctor and Student.
Dods. Rep.	Dodson's Reports in the High Court of Admiralty.
Doug.	Douglas's Reports, edit. of 1813.
Dow's Rep.	Dow's Reports of Cases in the House of Lords.
Dyer.	Dyer's Reports.
East.	East's King's Bench Reports
East's P. C.	East's Pleas of the Crown.
Eq. ab.	Equity Cases abridged.
Esp.	Espinasse's Nisi Prius Reports.
Ev. Col. Stat.	Evans's Collection of Statutes.
Field. Pen. Stat.	Fielding's Penal Laws, 1769.
Finch.	Finch's Law, edit. 1636.
Finch's Rep.	Reports temp. Finch, in Chancery.
Fitzg.	Fitz Gibbon's Reports.
Fitz. N. B.	Fitzherbert's Natura Brevium.
Fol.	Foley's Poor Laws.
Fort.	Fortescue's Reports.
Fost.	Foster's Crown Law.
Gibs. & Gibs. Codex	Gibson's Codex Juris Civilis
Gilb. Dist.	Gilbert on Distresses.
Gilb. Ev.	Gilbert's Law of Evidence.
Gilb. Exch.	Gilbert's Treatise on the Exchequer.
God.	Godbolt's Reports.
Goldsb.	Goldsborough's Reports.
Gow.	Gow's Nisi Prius Reports.
Greenw.	Greenwood of Courts.
Gwill.	Gwillim's Tithe Cases.

Hagg.	Haggard's Reports of Cases in the Consistory Court of London.
Hale.	Hale's Pleas of the Crown.
Hale's Sum.	Hale's Summary of Pleas of the Crown,
Hans. Parl. Deb	Hansard's Parliamentary Debates,
Hardr.	Hardress's Reports,
Haw.	Hawkins's Pleas of the Crown, edit. of 1771,
Het.	Hetley's Reports.
Hob.	Hobart's Reports, edit. of 1724.
Holt.	Reports tempore Holt.
Holt on Lib.	Holt on the Law of Libel, 1816.
Holt's Rep.	Holt's Reports.
Howell's St. Tri.	Howell's Collection of State Trials,
Hutt.	Hutton's Reports.
Inst.	Lord Coke's Institutes.
Jenk.	Jenkins's Reports.
Jon.	Sir William Jones's Reports.
T. Jones.	Sir Thomas Jones's Reports.
Keb.	Keble's Reports.
Keilw.	Keilwey's Reports.
Kel.	Kelyng's Reports.
Kitch.	Kitchen on Courts.
Lamb.	Lambard's Eirenarcha, 1619.
Latch.	Latch's Reports.
Leach.	Leach's Crown Cases, 4th edit.
Leon.	Leonard's Reports.
Lev.	Levinz's Reports.
Lill. Abr.	Lilly's Abridgement.
Litt. R.	Littleton's Reports.
Lofft.	Lofft's Reports.
Lutw.	Lutwyche's Reports.
Madd.	Maddock's Reports in the Vice Chancellor's Court.
Manw.	Manwood's Forest Laws, edit. 1717.
Marsh.	Marshall's Reports in the Common Pleas.
M. & S.	Maule & Selwyn's Reports.
Mer. Ch. Rep.	Merivale's Chancery Reports.
Mir.	Horne's Mirror of Justices.
Mod.	Modern Reports.
Mo.	Moore's Reports.
Moore, C. P.	Moore's Reports in the Common Pleas.
MS.	The Editor's Manuscripts.
MS. (B.)	MS. of Dr. Burn.
MS. C. C. R.	Manuscript Crown Cases reserved.
MS. (D.)	MS. of Mr. Durnford.
MS. (K.)	MS. of Mr. King, (22d edition of this work.)
MS. Sum.	Lord Hale's Summary of Pleas of the Crown, with MS. notes and additions.
Nares.	Nares on Convictions.
Nels.	Nelson's Justice, 1736.
N. R.	New Reports by Bosanquet & Puller.
Nol. P. L.	Nolan's Poor Laws, 4th edition. (Where the 3d edition is cited, it is so expressed.)
Nol. Rep.	Nolan's Reports.
Noy.	Noy's Reports.

Paley.	Paley on Convictions.
Palm.	Palmer's Reports in King's Bench.
Park.	Parker's Exchequer Reports.
Par. L.	Shaw's Parish Law.
Peake's Ev.	Peake's Evidence, 5th edition.
Peake's Rep.	Peake's Reports.
Peckw.	Peckwell's Election Cases.
Phill. Ev.	Phillipps's Law of Evidence, 6th edition.
Plow.	Plowden's Treatise on Tithes.
Pol.	Pollexfen's Reports.
Poph.	Popham's Reports.
Pract. Chan.	Practice in Chancery, pub. 1672.
Pre. Ch.	Precedents in Chancery.
Price.	Price's Exchequer Reports.
Pult.	Pulton de Pace Regis et Regni, 1609.
P. Wm.	Peere Williams's Reports.
Ld. Raym.	Lord Raymond's Reports.
T. Raym.	Sir Thomas Raymond's Reports.
Read.	Readings upon the Statutes, 1723.
Rep.	Lord Coke's Reports.
Ritson.	Ritson's Office of Constable.
Robin. Adm. Rep.	Robinson's Admiralty Reports.
Roll. Abr.	Rolle's Abridgement.
Roll. Rep.	Rolle's Reports.
Russ.	Russell on Crimes and Misdemeanors.
Salk.	Salkeld's Reports.
Saund.	Saunders's Reports, edit. of 1809.
Say.	Sayer's Reports.
Seld. Tit. of Hon	Selden's Titles of Honor.
Selw. N. P.	Selwyn's Law of Nisi Prius, 4th edit.
Sess. Ca.	Sessions Cases.
Sess. Pap.	The Old Bailey Sessions Papers.
Sett & Rem.	Cases in King's Bench concerning Poor.
Shaw.	Shaw's Justice, edit. of 1744.
Shep. Touchst.	Sheppard's Touchstone.
Show.	Shower's Reports.
Sid.	Siderfin's Reports.
Sim. & Stu.	Simons's & Stuart's Reports in the Vice Chancellor's Court.
Simeon.	Simeon on Elections.
Skin.	Skinner's Reports.
Smith's Rep.	Smith's Reports.
Stark. C. P.	Starkie's Criminal Pleading.
Stark. Ev.	Starkie on Evidence.
Stark. N. P.	Starkie's Nisi Prius Reports.
Staunf.	Staundforde's Pleas of the Crown.
Str.	Strange's Reports.
Sty.	Style's Reports.
Swanst. Rep. C.	Swanston's Reports in Chancery.
Taunt.	Taunton's Reports.
Terms of the L.	Terms of the Law.
Tom. Dict.	Tomlins's Law Dictionary.
Too. M. M.	Toone's Magistrate's Manual.
Trem.	Tremaine's Pleas of the Crown.
T. R.	Term Reports by Durnford & East.

Tri. per Pais.	Trial per Pais, edit. 1725.
Tyrw. & Tyn. Dig. of Stat.	Tyrwhitt & Tyndale's Digest of the Statutes.
Vaugh.	Vaughan's Reports.
Vent.	Ventris's Reports.
Vern.	Vernon's Reports.
Ves.	Vesey, jun. Reports.
Vez.	Vezey's Reports.
Vin. Abr.	Viner's Abridgment.
Watson.	Watson's Clergyman's Law.
Wightw.	Wightwick's Exchequer Reports.
Will.	Willes's Reports.
Wils.	Wilson's Reports.
Winch.	Winch's Reports in the Common Pleas, 1757.
Wms. Prec.	Williams's Precedents.
Wood's Inst.	Wood's Institutes, 1763.
Woodf.	Woodfall's Law of Landlord and Tenant, edit. of 1819.
Y. C. P.	Precedents of Proceedings on the Yeomanry Cavalry Act, published July 1822.
Yelv.	Yelverton's Reports.

LIST OF EDITIONS

OF

DR. BURN'S JUSTICE OF THE PEACE.

1st and 2nd, in 2 small octavo vols. - -	in 1754 and 1756.
3rd, in one vol. folio. - - -	in 1756.
4th, in 3 vols. octavo. - - - -	in 1757.
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23rd, in 5 vols. octavo, by Mr., now, Sir G. Chetwynd.	in 1820.

* Dr. Burn died in 1785.

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ERRATA.

VOL. I.

Page 52. line 19. for "15" read "16."
136. line 15. at the beginning add "By § 39."
138. line 6. for "himself" read "herself."
363. dele the 2d "6 *G.* 2. *c.* 37." in margin.
172. line 9. in the margin for "5*l.*" read "25*l.*" and after "20 *G.* 2. *c.* 19." add "4 *G.* 4. *c.* 29."
174 line 3. in margin, add "4 *G.* 4. *c.* 29."

VOL. II.

Page 18. line 5. from bottom in margin, dele "seized."
48. for Proceeding (black.) read Proceedings.
78. line 15. in margin, add "the succeeding quarter day."
186. line 30. after "skins" dele "and," and after "leather" add "and parchment."
217. line 16. for "(*Ale and Beer*)" read "(*Cyder, Perry, &c.*)"
—— line 22. add "59 *G.* 3. *c.* 52." after "56 *G.* 3. *c.* 103."
219. line 41. for "without," read "with."
678. § XIV. (*b*) line 2. for "5 *G.* 4. *c.* 18." read "*c.* 84."
701. § XI. Enumeration of statutes, add "55 *G.* 3. *c.* 50. 56 *G.* 3. *c.* 116."
878. in margin dele "— LXIII."
933. line 5. for "No. XV." read "No. 15."
935. for "No. XVI." read "No. 16."
936. 937. for "Nos. XVII. XVIII. XX. XXI. XXII." read "Nos. 17. 18. 20. 21. 22."
942. line 21. and margin, for "No. XXIV." read "No. 24."
943. line 7. from top of margin, for "No. XIV." read "No. 14."
987. line 20. dele the second "No. 11." and in margin also: and read "Nos. 12. 13."
1076. note (*d*) add "*Rex* v. *Justices of King's Lynn*, T. 5 *G.* 4. 3 *B.* & *C.* 147."

VOL. III.

Page 258. top line in margin, for "19 *G.* 3. *c.* 74.;" read "4 *G.* 1. *c.* 11."
626. § VII. line 1. dele "4 *G.* 3. *c.* 33. 45 *G.* 3. *c.* 124." and insert "5 *G.* 4. *c.* 98. See the last Indemnity Act, 6 *G.* 4. *c.* 8."

VOL. IV.

Page 272. line 26. dele "(9) 51 *G.* 3. *c.* 79. § 7."
275. line 6. dele "(11)" and read "(10)"
—— line 13. dele "(12)" and read "(11)"

(*See also the end of Vol. IV.*)

VOL. V.

Page 11. line 14. dele "and."
— line 18. for "*herein*" read "*hereon*."
81. § IV. line 3. add at the end "5 *G.* 4. *c.* 107."
101. § 7. line 19. add "5 *G.* 4. *c.* 107."
— line 30. add, "But now by stat. 5 *G.* 4. *c.* 107. § 5. p. 697. this punishment is altered to transportation for life, or for not less than seven years: or to imprisonment for life, or for not less than seven years, in some gaol or house of correction."
161. line 18. for "tended" read "tendered."
172. line 11. for "first" read "above."
371. last line in margin, for "suits" read "costs."
606. line 19. from bottom, for "*act*" read "*acts*."
— last line but two, for "*statute*" read "*statutes*."
— last line, for "*statute*" read "*statutes*."
608. line 16. for "*statute*" read "*statutes*."

Abduction. See **Child-stealing, Wife**, and **Women**, Vol. V.
Abjuration Oath. See **Oaths**. Vol. III.
Abortion. See **Bastards**.

Accessary.

I. Of Accessaries in general.

Accessary, what.

AN accessary (*quasi accedens ad culpam*) is he who is not the chief actor in the offence, nor present at its performance, but is some way concerned therein, either *before* or *after* the fact committed. 4 *Blac. Com.* 35.

In treason, no accessaries.

In the highest capital offence, namely, high treason, there are no accessaries, neither *before* nor *after*; for all consenters, aiders, abettors, and knowing receivers and comforters of traitors are principals. 1 *Hale*, 613.

But yet as to the course of proceeding, it hath been and indeed ought to be the course, that those who did actually commit the very fact of treason should be first tried, before those that are principals in the second degree; because otherwise this inconvenience might follow, that the principals in the second degree might be convicted, and yet the principals in the first degree may be acquitted, which would be absurd. 1 *Hale*, 613.

In the lowest offences, no accessaries.

So in cases that are criminal, but not capital, as in *petit larceny*, and *trespass*, there are no accessaries; for all the accessaries *before* are in the same degree as principals; and accessaries *after*, by receiving the offenders, cannot be in law under any penalties as accessaries, unless the acts of parliament that induce those penalties, do expressly extend to receivers or comforters, as some do. 1 *Hale*, 613. 4 *Blac. Com.* 36. (See also post, p. 7.)

Accessaries only in capital felonies.

Therefore the business of this title of accessary refers only to *Capital felonies*, whether by the common law, or by act of parliament.

Accessaries implied in felony.

Concerning which, Ld. *Coke* observes, generally, that when an offence is felony, either by the common law, or by statute, all accessaries both before and after are incidentally included. 3 *Inst.* 59.

Accessaries in felonies by statute.

But as to felonies by act of parliament, Ld. *Hale* distinguishes thereupon as follows; regularly (he says) if an act of parliament enacts an offence to be felony, though it mention nothing of accessaries *before* or *after*, yet virtually and consequently those that counsel or command the offence, are accessaries *before*; and those that knowingly receive the offender, are accessaries *after*. 1 *Hale*, 613.

But if the act of parliament, that makes the felony, in express terms comprehend accessaries *before*, and make no mention of accessaries *after*, namely, receivers or comforters, there it seems there can be no accessaries *after*; for the expression of procurers, counsellors, abettors, all which import accessaries before, makes it evident, that the law-makers did not intend to include accessaries *after*, which is an offence of a lower degree than accessaries *before*. 1 *Hale*, 614.

Yet, says Mr. Hawkins, I take it to be settled at this day, that, in these and all other cases, where a statute makes any offence treason or felony, it involves the receiver of the offender in the same guilt with himself, in the same manner as in treason or felony at common law, unless there be an express provision to the contrary. 2 *Haw. c.* 29. § 14.

And although it be generally true, that an act of parliament, creating a felony, renders, consequentially, accessaries *before* and *after* within the same penalty, yet the special penning of the act sometimes varies the case. 1 *Hale*, 614.

Thus the statute of 27 *Eliz. c.* 2. makes the coming in of a Jesuit treason, the receiving or relieving of him felony, the contributing of money to his relief a *præmunire*. So that acts of parliament may diversify the offences of accessary or principal, according to the various penning thereof, and so have done in many cases. 1 *Hale*, 615.

Lord Coke and Mr. J. Foster considered the word *command* as comprehending all those who incite, procure, set on, or stir up, any other to do the fact. 2 *East's P. C.* 641.

How far accessaries by statute shall have their clergy.

Also a statute, excluding the principals from the benefit of clergy, doth not thereby exclude the accessaries before or after; neither doth a statute, excluding the accessaries, thereby exclude the principals. 2 *Haw. c.* 33. § 26.

II. Of Accessaries before the fact.

An accessary before the fact committed, is he that, being absent at the time of the felony committed, doth yet procure, counsel, command, or abet, another to commit a felony.

Accessary before.

Being absent at the time of the felony committed.] For if he be present, he is not an accessary, but a principal.

So, if divers come to commit an unlawful act, and be present at the time of the felony committed, though one of them only doth it, they are *all* principals. *Hale's Sum.* 215.

So, if one present move the other to strike; or if one present did nothing, but yet came to assist the party if needful; or if one hold the party while the felon strikes him; or if one present deliver his weapon to the other that strikes: for they are *present* aiding, abetting, or comforting. *Hale's Sum.* 216.

So, if several persons set out together, or in small parties, upon one common design, be it murder or other felony, or for any other purpose unlawful in itself, and each taketh the part assigned him, some to commit the fact, others to watch at proper distances and stations to prevent a surprise, or to favour, if need be, the escape of those who are more immediately engaged. They are all, provided the fact be committed, in the eye of the law *present* at it: for it was made a common cause with them, each man operated in his station at one and the same instant towards the same common end; and the part each man took tended to give countenance, encouragement, and protection to the whole gang, and to insure the success of their common enterprise. *Fost.* 350.

Also in some cases, even a person *absent* may be principal; as he that puts poison into any thing to poison another, and leaves it, though not present when it is taken: And so it seems all that are present when the poison is so infused, and consenting thereto. *Hale's Sum.* 216.

But if one came casually, not of the confederacy, though he hindered not the felony, he is neither principal nor accessary, although he apprehend not the felon; but for his negligence he is punishable by fine and imprisonment. *Hale's Sum.* 216. 2 *Haw. c.* 29. § 10.

Persons not present, nor sufficiently near to give assistance, are not principals.

Brighton uttered a forged note at *Portsmouth*; the plan was concerted between him and two others, to whom he was to return when he had passed the note, and divide the produce. The three had before been concerned in uttering another forged note; but at the time this note was uttering in *Portsmouth*, the other two stayed at *Gosport*. The jury found all three guilty: but on case, the judges were clear, that as the other two were not present, nor sufficiently near to assist, they could not be deemed principals, and therefore they were recommended for a pardon. *Rex* v. *Soares*, *Atkinson*, and *Brighton*. *MS. C. C. R.* 2 *East's P. C.* 974. *S. C.*

Going towards the place where a felony is to be committed in order to assist in carrying off the property, and assisting accordingly, will not make a man principal, if he were at such a distance at the time of the felonious taking as not to be able to assist in it.

The prisoner and J. S. went to steal two horses. J. S. left the prisoner half a mile from where the horses were, and brought the horses to him; and both rode away with them. On case reserved, the judges thought the prisoner an accessary only, not a principal, because he was not present at the original taking. *Rex v. Kelly, M.* 1820. *M. S. C. C. R.*

Procure, counsel, command, or abet.] But here note some diversities: As,

(1) *When the principal doth not accomplish the fact altogether in the same sort, as it was beforehand agreed between him and the accessary;* And therefore if one command another to lay hold upon a third person, and he lays hold upon him and robs him, the person commanding is not accessary to the robbery, for his command might have been performed without any robbery. *Dalt. c.* 161. *p.* 369.

But if the command had been to beat him, and the party commanded doth kill him, or beat him so that he dieth thereof; the person commanding shall be accessary to the murder; for it is a hazard in beating a man, that he may die thereof. *Id.*

(2) *He that commandeth or counselleth any evil or unlawful act to be done* (*a*), *shall be adjudged accessary to all that shall ensue upon the same evil act, but not to any other distinct thing.* As, if one command another to steal a horse, and he stealeth an ox; or to rob a man by the highway of his money, and he robs him in his house of his plate; or to burn such a one's house, and he burneth the house of another: these are other acts and felonies than he commanded to be done, and therefore he shall not be adjudged accessary to them. *Id.*

(3) *But if a person commit the same felony, which another did command or counsel to be done, though he doth it at another time, or in another place, or in another sort than was commanded or counselled, yet here such person commanding or counselling shall be accessary.* As, if he doth counsel to kill a man by poison, and he kills him with a dagger; or to kill him by the highway, and he kills him in his house; or to kill him one day, and he kills him on another day; in these and the like cases he shall be accessary to the murder. *Id.*

(4) *Those offences, which in the construction of law are sudden and unpremeditated, cannot have any accessaries before.* As, killing a man by misadventure in his own defence, or manslaughter; for in such case there can be no procuring, counselling, commanding, or abetting. 1 *Hale,* 616.

(5) It seems to be generally agreed, that *he who barely conceals a felony which he knows to be intended, is guilty only of a misprision of felony, and shall not be adjudged an accessary;* for this is not procuring, counselling, or abetting. 2 *Haw. c.* 29. § 23.

(6) Also, if a man counsel or command another to kill a person, and before he hath killed him, he who counselled or commanded it, repents and *countermands* it, charging him not to kill him, and yet after he doth kill him; here such person countermanding shall not be adjudged accessary to the murder: for, generally, the law adjudgeth no man accessary to a felony before

(*a*) To incite and solicit another to commit a crime, is a misdemeanor at common law, although no act be done in consequence of such incitement and solicitation. *Rex v. Higgins,* 2 *East,* 5.

the fact, but such as continue in that mind at the time that the felony is done and executed. *Dalt. c.* 161. *p.* 369.

(7) But if a person advise a woman to kill her child as soon as it shall be born, and she kill it in pursuance of such advice; he is an accessary to the murder, though at the time of the advice, the child not being born, no murder could be committed of it; for the influence of the felonious advice continuing till the child was born, makes the adviser as much a felon, as if he had given his advice after the birth. 2 *Haw. c.* 29. § 18.

See stat. 3 *G.* 4. *c.* 38. § 3 & 4. post, 9. as to accessaries before the fact in certain cases.

III. Of Accessaries after the Fact.

Accessary after.

Accessary after the fact is, where a person, knowing the felony to be committed by another, relieves, comforts, or assists the felon.

The receiver must have notice.

Knowing the felony to be committed.] There can be no doubt, but that it is necessary that the receiver have notice of the felony, either express or implied; and it must be laid in the indictment, that the receiver *knew* that the person received by him had committed the principal felony. 2 *Haw. c.* 29. § 32.

The felony.] This, as hath been said, holds place only in *felonies*, and in those felonies where by the law judgment of death regularly ought to ensue; and therefore ought not in petit larceny. 1 *Hale*, 618.

And it seems if a person do barely receive, comfort, and conceal an offender guilty of *any common trespass, or inferior crime of the like nature*, though he knew him to have been guilty, and that there is a warrant out against him, (which by reason of such concealment cannot be executed,) yet he is not an accessary to the offence; but perhaps in such case he may be indictable for a contempt of the law, in hindering the due course of justice. 2 *Haw.* c. 29. § 4.

Relieves, comforts, or assists the felon.] In the explication of these words several things are considerable:

(1) Generally, any assistance whatsoever given to one known to be a felon, in order to hinder his being apprehended, or tried, or suffering the punishment to which he is condemned, is sufficient to bring a man within this description, and make him accessary to the felony; as, where one assists him with a horse to ride away with, or with money or victuals to support him in his escape. 2 *Haw. c.* 29. § 26.

(2) But if a man know that a person hath committed a felony, but doth not discover it, this doth not make him an accessary, but it is a misprision of felony, for which he may be indicted, and upon his conviction fined and imprisoned. 1 *Hale*, 618.

(3) Also, if a man see another commit a felony, but consents not, nor yet takes care to apprehend him, or to levy hue and cry after him, or upon hue and cry levied doth not pursue him; this is a neglect punishable by fine and imprisonment, but it doth not make him an accessary. 1 *Hale*, 618.

(4) In like manner, if one commit a felony, and come to a person's house before he be arrested, and such person suffer him to escape without arrest, knowing him to have committed a felony, this doth not make him accessary; but if he take money of the

felon to suffer him to escape, this makes him accessary: And so it is if he shut the fore-door of his house, whereby the pursuers are deceived, and the felon hath opportunity to escape, this makes him an accessary; for here is not a bare omission, but an act done by him to accommodate the felon's escape. 1 *Hale*, 619.

(5) Also, it seems to be settled at this day, that whosoever rescues a felon from an arrest for the felony, or voluntarily suffers him to escape, is an accessary to the felony. 2 *Haw. c.* 29. § 27.

(6) But if a felon be in prison; he that relieves him with necessary meat, drink, or clothes, for the sustentation of life, is not accessary. 1 *Hale*, 620.

(7) So if he be bailed out, it is lawful to relieve and maintain him, for he is *quodammodo* in custody, and is under a certainty of coming to his trial. 1 *Hale*, 620.

(8) But if a felon be in gaol, for a man to convey instruments to him to break prison to make an escape, or to bribe the gaoler to let him escape, makes the party an accessary: for though common humanity allows every man to afford such persons necessary relief, yet common justice prohibits all unlawful attempts to cause their escapes. 1 *Hale*, 621.

(9) The sending a letter in favour of a felon, or advising to labour witnesses not to appear, makes no accessary; but it is a high contempt. *Hale's Sum.* 219.

(10) A man may be accessary to an accessary, by the receiving of him, knowing him to be an accessary to felony. 1 *Hale*, 622.

(11) If a man have goods stolen, and he receive his goods again, simply, without any contract to favour the felon in his prosecution, this is lawful; but if he receive them upon agreement not to prosecute, or to prosecute faintly, this is theftbote, punishable by imprisonment and ransom, but yet it makes him not an accessary; but if he takes money of him to favour him, whereby he escapes, this makes him accessary. 1 *Hale*, 619.

(12) And if any person shall receive or buy stolen goods, knowing them to be stolen, or shall receive, harbour, or conceal the thieves, he shall, *where the original offences admitted of accessaries*, be deemed an accessary, and be transported for fourteen years. 3 *W.* 3. *c.* 9. § 4. 1 *Ann. st.* 2. *c.* 9. 5 *Ann. c.* 31. § 5. 4 *G.* 1. *c.* 11. 3 *G.* 4. *c.* 24.

And buying the goods at an under-value, is a presumptive evidence that the buyer knew they were stolen. 1 *Hale*, 619.

(13) It seems agreed, that the law hath such a regard to that duty, love, and tenderness, which a wife owes to her husband, as not to make her an accessary to felony by any receipt given to her husband. Yet if she be any way guilty of procuring her husband to commit it, it seems to make her an accessary before the fact, in the same manner as if she had been sole. Also, it seems agreed, that no other relation besides that of a wife to her husband will exempt the receiver of a felon from being an accessary to the felony; from whence it follows, that if a master receive a servant, or a servant a master, or a brother a brother, or even a husband a wife, they are accessaries in the same manner as if they had been mere strangers to one another. 2 *Haw. c.* 29. § 34.

(14) But if the wife alone, the husband being ignorant of it, do

receive any other person, being a felon; the wife is accessary, and not the husband. 1 *Hale*, 621.

(15) But if the husband and wife both receive a felon knowingly, it shall be adjudged only the act of the husband, and the wife shall be acquitted. *Id.*

No accessaries in petit larceny.

There can be no accessaries in petit larceny. 12 *Rep.* 81. 1 *Hale*, 530. Not even under the stat. *Will* and *Ann.* *Case of A. Evans*, *Fost.* 73.

IV. How Accessaries to be proceeded against.

Accessaries, how far bailable.

By 3 *Ed.* 1. *c.* 15. those who are *accused of the receipt of felons, or of commandment, or force, or of aid in felony done, shall be bailable;* but this seemeth to be only where it stands indifferent whether the party be guilty or innocent: for if there be strong presumptions of guilt, it seemeth that he is not bailable. 2 *Haw. c.* 15. § 53.

In what county to be tried.

By stat. 2 and 3 *Ed.* 6. *c.* 24. § 2 and 3., where any person is feloniously stricken or poisoned in one county, and dies thereof in another county, the accessary may be indicted in the county where the death shall happen.

Also, by § 4., where a murder or felony is committed in one county, and the person is accessary in another county, the accessary may be indicted in the county where he was accessary: And the judges of assize, or two of them, of the county where the offence of the accessary shall be committed, on suit to them made, shall write to the keeper of the records where the principal shall be convicted, to certify them whether such principal be attainted, convicted, or otherwise discharged; which he shall certify under his seal.

43 G. 3. c. 113. Where accessaries before the fact may be tried.

By 43 *Geo.* 3. *c.* 113. § 5. After reciting that, whereas it is convenient that accessaries to felonies committed within the body of any county within the realm, should be by law liable to be tried, as well in the county wherein the principal felony was committed, as in the county in which they so became accessaries, and also that accessaries to felonies committed upon the high seas should be by law liable to be tried by such court, and in such manner, as by stat. 28 *H.* 8. directed in respect to felonies done upon the high seas, it is therefore enacted, That from and after the 16th *July*, 1803, in all cases in which any person shall hereafter procure, direct, counsel, or command any other person to commit, or shall abet any other person in committing any felony whatsoever, or shall in any wise whatsoever become an accessary before the fact to any felony whatsoever, whether such principal felony be committed within the body of any county, or upon the high seas, and whether such procuring, &c., or otherwise becoming accessary before the fact shall have been committed within the body of any county, or upon the high seas, in all such cases the offence of the person or persons so procuring, &c., such felony, or so in any wise becoming accessary before the fact to such felony, shall and may be inquired of, tried, determined, and adjudged, in case such principal felony shall have been committed within the body of any county within this realm, by the course of the common law, either within such county wherein the said principal felony shall have been committed, or within the county wherein the said offence in pro-

How accessaries and receivers are to be proceeded against.

43 G. 3. c. 113.

curing, &c. or otherwise becoming accessary before the fact shall have been committed; and in case the said principal felony shall have been committed upon the high seas, then the said offence, in procuring, &c. such felony, or of so becoming an accessary before the fact to the same, shall and may be inquired of in and by such court, and in such manner and form, as in and by the said act 28 *H.* 8. is appointed and directed for the trying, determining, and adjudging, of felonies done upon the high seas: Provided, that no person who shall hereafter be once tried and acquitted, or convicted of any such offence, in procuring, &c. any felony, or of otherwise becoming an accessary before the fact to such felony, whether the trial of such person shall have been had according to the course of the common law, as in the case of a felony committed within the body of any county in this realm, or according to the provisions contained in the 28 *H.* 8. as in the case of a felony committed on the high seas, shall be liable to be again indicted, prosecuted, or tried, for the same offence, in any court or jurisdiction whatsoever. (*a*)

No person so tried, shall be liable to be again tried for the same offence in any court.

And by § 6. reciting that, whereas by an act, made in the 33 *H.* 8. intituled, *An act to proceed, by commission of* oyer *and* terminer, *against such persons as shall confess treason,* &c., *without remanding the same to be tried in the shire where the offence was committed;* certain powers, *&c.* are given for making commissions of *oyer* and *terminer*, for the speedy trial, *&c.* of persons examined before the king's council, or three of them, upon any murders or other offences therein mentioned, and for inquiring of, *&c.* such murders and other offences, under such circumstances, and in such cases, as in the said act are mentioned, which said act, so far as the same relates to the crime of murder, is still in force and unrepealed, but no provision is therein made for the trial of accessaries before the fact in murder, or for the trial of the offence of manslaughter, either upon indictments for that offence, or for the crime of murder, under any commission to be made or issued in pursuance of the same act, whereby persons guilty of those offences, and more particularly when such murders or manslaughters happen to be committed out of the realm, and not upon the high seas, may frequently escape punishment, therefore it is enacted, that from henceforth all and singular the powers, *&c.* in the said last recited act contained respecting the offence of murder, and the examination of any person or persons upon any murders by the king's council, or three of them, and the making or issuing of commissions of *oyer* and *terminer* for the trial, conviction, or delivery of offenders, and the inquiring, hearing, and determining of all such murders in manner therein mentioned, and all other the clauses, *&c.* concerning the offence of murder, and the inquiring, *&c.* thereof, and the trial, *&c.* of such offenders therein, as in the same act are mentioned, are hereby extended to the offence of procuring, *&c.* or otherwise becoming an accessary before the fact to any murder; and also to the offence of manslaughter, in like manner as if those offences had been expressly mentioned in the said last recited act; and in case any offender shall, in pursuance of

33 Hen. 8. c. 23. recited, and the powers therein contained respecting murder, &c. shall be extended to accessaries before the fact in murder and in manslaughter.

If on the trial of any offender for murder, it shall appear he is guilty of

(*a*) See title Ships for the occasion of passing this act.

this or the said recited act, be indicted for murder, and upon such trial it shall appear that the person so indicted and tried is guilty of manslaughter, and of no greater offence, the jury may on such indictment find the party guilty of manslaughter only; or, in case of doubt or difficulty, may find a special verdict, upon which there shall be the like proceedings, *&c.*, as, if the offence had been committed within the body of any county within this realm, and such trial had been had, and such general or special verdict had been found upon an indictment for murder found and tried according to the course of the common law by a jury of the same county within which the offence was committed.

43 G. 3. c. 113.

manslaughter only, the jury may find accordingly, or a special verdict.

By stat. 3 *G.*4. *c.*38. § 3. after reciting, "And whereas children, servants, and others, are often induced to commit thefts, by the persuasion, instigation, or commands of wicked and evil-disposed persons, who, not being present, aiding and assisting in the commission of such thefts, frequently escape the punishment which so mischievous an offence demands; it is therefore enacted, that, "if any person or persons shall counsel, hire, procure, or command any other person or persons to commit any larceny whatsoever of the degree of grand larceny, then and in every such case, if the person or persons so counselling, hiring, procuring, or commanding as aforesaid, shall be convicted of felony, and shall be entitled to the benefit of clergy, and by the laws now in force shall be liable to be fined and imprisoned for any term not exceeding one year only, he, she, or they, instead of being so fined and imprisoned as aforesaid, may, at the discretion of the court by or before which any such offender shall be convicted, be ordered and adjudged to be transported beyond the seas for the term of seven years, or to be imprisoned only, or to be imprisoned and kept to hard labour, in the common gaol, house of correction, or penitentiary house, for any term not exceeding three years."

3 G. 4. c. 38. Persons advising children or others to commit thefts, how to be punished.

§ 4. For the due punishment of accessaries before the fact to burglary, robbery, and larceny, in cases where the principal offenders shall not have been discovered, or shall be concealed, or not be amenable to justice; it is enacted, that, "if any person or persons shall counsel, hire, procure, or command any other person or persons to commit any burglary, robbery, or larceny whatsoever, of the degree of grand larceny, then and in any such case (except where the person or persons actually committing any such felony as aforesaid shall have been actually convicted thereof) the person or persons so counselling, hiring, procuring, or commanding as aforesaid, shall be held and deemed guilty of and may be prosecuted for a misdemeanor; and being convicted thereof shall be liable to be imprisoned only, or to be imprisoned and kept to hard labour, in the common gaol, house of correction, or penitentiary house, for any term not exceeding two years, although the principal felon or felons be concealed or be conveyed away, or be not before convicted of any such felony as aforesaid, and whether he, she, or they is or are amenable to justice or not; any law or statute to the contrary notwithstanding: Provided always, that any such offender, after having been prosecuted and convicted under this act, shall not for the same offence be afterwards punished, or liable to be punished, as an accessary before the fact, if the principal felon or felons shall be afterwards convicted."

Punishment of accessaries before the fact, in certain cases.

Indictment.

Accessary and principal in the same indictment.

The accessary may be indicted in the same indictment with the principal, and that is the best and most usual way: but he may be indicted in another indictment: but then such indictment must contain the certainty and kind of the principal felony. 1 *Hale*, 623.

Principal to be first convicted.

It seemeth that the accessary may be put to answer before the principal hath appeared: but his plea cannot be tried before such appearance, unless he desire it himself; but if he will put himself upon the trial before the principal be tried he may; and his acquittal or conviction, upon such trial, is good. 2 *Haw. c.* 29. § 45. 1 *Hale*, 623.

But it seemeth necessary in such case to respite judgment till the principal be convicted and attaint; for if the principal be after acquitted, that conviction of the accessary is annulled, and no judgment ought to be given against him: but if he be acquitted of the accessary, that acquittal is good, and he shall be discharged. 1 *Hale*, 623, 624.

Both tried by one inquest.

It seems to be settled that if the principal and accessary appear together, and the principal plead the general issue, the accessary shall be put to plead also; and that if he likewise plead the general issue, both may be tried by one inquest; but that the principal must be first convicted, and that the jury shall be charged, that if they find the principal not guilty, they shall find the accessary not guilty. But it seems agreed, that if the principal plead a plea in bar or abatement, or a former acquittal, the accessary shall not be forced to answer, till that plea be determined; for if it be found for the principal, the accessary is discharged; if against the principal, yet he shall after plead over to the felony, and may be acquitted. 2 *Haw. c.* 29. § 47. 1 *Hale*, 624.

Accessary may be tried, though the principal be not attainted.

Anciently the accessary could not be tried unless the principal were *attainted* (3 *Ed.* 1. *c.* 14.): but by the 1 *Ann. stat.* 2. *c.* 9. § 1. if the principal be convicted, or if he peremptorily challenge above twenty of the jury, the accessary may be tried and punished as if the principal had been attainted, and this although the principal be admitted to his clergy, pardoned, or otherwise delivered before attainder.

Case where a person is [c]harged as accessary to more than one.

Formerly if a man had been indicted as accessary in the same felony to several persons, he could not have been arraigned till all the principals were convicted and attainted: but as the law now stands, if a man be indicted as accessary to two or more, and the jury find him accessary to one, it is a good verdict, and judgment may pass upon him. 9 *Rep.* 119. *Fost.* 361.

And therefore the court in their discretion may arraign him as accessary to such of the principals who are convicted; and if he be found guilty as accessary to them or *any* of them, judgment shall pass upon him: But on the other hand, if he be acquitted, that acquittal will not discharge him as accessary to the others; but by *stat.* 43 *G.* 3. *c.* 113. § 5. it is provided that no person shall be tried more than once for the same offence of being accessary *before* the fact.

[C]ase where the [p]rincipal is

If the principal be erroneously attaint, yet the accessary shall be put to answer, and shall not take advantage of the error in

that attainder; but the principal reversing the attainder reverseth the attainder of the accessary. 1 *Hale*, 625.

erroneously attainted.

Where an indictment for receiving stolen goods averred that the principal felon had been *duly convicted*, upon an objection that the record which was produced was not sufficiently formal and correct to support the averment, it was held that the *judgment* was not necessary, and might be rejected; that the *conviction was sufficient;* that in the common case where the receiver is tried with the thief, there is no judgment on the thief before the verdict against the receiver; and that although the record produced was full of errors, yet an erroneous attainder of the principal is sufficient, as against the accessary, until it is reversed. *Baldwin's case, Monmouth Sum. Ass.* 1812, *cor. Thomson, B.* 3 *Campb.* 265.

The judgment upon an indictment must be taken to be good until it is reversed by a writ of error; as in the case of proceedings against the accessary. So, if there be a judgment against the husband for treason, not reversed by error, it is sufficient to deprive the wife of her dower. *Per Lawrence* J. *Holmes* v. *Walsh*, 7 *T. R.* 465.

If the principal and accessary are joined in one indictment and tried together, which seems to be the most eligible course where both are amenable, there is no room to doubt, whether the accessary may not enter into the full defence of the principal, and avail himself of every matter of fact, and every point of law tending to *his* acquittal. For the accessary is in this case to be considered as *particeps in lite*, and this sort of defence necessarily and directly tendeth to his own acquittal. *Fost.* 365.

But when the accessary is brought to his trial *after* the conviction of the principal, it is not necessary to enter into a detail of the evidence on which the conviction was founded. Nor doth the indictment aver that the principal was in fact *guilty*. It is sufficient if it recite, with proper certainty, the record of the *conviction*. This is evidence against the accessary, sufficient to put him upon his defence, for it is founded upon a legal presumption, that every thing in the former proceeding was rightly and properly transacted. But a presumption of this kind must, as it seemeth, give way to facts manifestly and clearly proved. *Fost.* 365.

As against the accessary, therefore, the conviction of the principal will not be conclusive; it is as to him *res inter alios acta:* for an accessary may controvert the guilt of the principal, notwithstanding the record of his conviction. *Smith's case, O. B. Dec.* 1783. 1 *Leach*, 289.

And therefore if it shall come out in evidence upon the trial of the accessary, as it sometimes hath and frequently may, that the offence of which the principal was convicted did not amount to felony in him, or *not to that species of felony with which he was charged*, the accessary may avail himself of this, and ought to be acquitted. *Fost.* 365.

John Donally and *George Vaughan* were tried at the *O. B. Sept.* Sess. 1816. *Donally* being indicted for a burglary in the house of a Mr. *Poole*, and *Vaughan* as accessary before the fact to the "*said felony and burglary.*" It appeared that by a previous concert between *Donally* and *Vaughan*, and a person named

Case of *Donally* and *Vaughan*. Objection on behalf of an accessary, that

R. v. *Donally* and *Vaughan.*

as the jury had acquitted the principal of burglary, and found him guilty only of stealing in the house, they could not find the accessary guilty as accessary to the "said felony and burglary;" but that they ought to have acquitted the accessary as they had negatived the burglary.

Barrett, *Donally* accompanied three other men, who went to rob Mr. *Poole*'s house, *Vaughan* and *Barrett* watching in a passage on the opposite side of the street; and the purpose of *Donally*, *Vaughan*, and *Barrett*, clearly being to procure a burglary to be committed by the three other men, and afterwards to apprehend and convict them, in order to get shares of the reward. Mr. *Poole*'s house was robbed; the three men who accompanied *Donally* were almost immediately apprehended by *Vaughan* and *Barrett*, and had been tried at a former sessions at the *Old Bailey* for burglary, but were convicted only of stealing in the dwelling-house to the amount of 40*s*., in consequence of Mr. *Poole*'s evidence, as to its being possible at the time the robbery was committed, to see a person's face by the light of the day.—Upon the present indictment against *Donally* and *Vaughan*, the jury acquitted *Donally* of the burglary, but found him guilty of stealing in the dwelling house to the amount of 40*s*., and they found *Vaughan* guilty as an accessary to the "said felony and burglary," the charge stated in the indictment. Upon this finding, *Curwood*, after taking an objection that this could not be larceny in *Donally*, because not done *animo furandi*, further objected on behalf of the prisoner *Vaughan*, that as the indictment was against him as accessary to a burglary committed by *Donally*, and as the jury had acquitted the principal of the burglary, the charge against the accessary must necessarily fail. That the offence of an accessary, though distinct, is yet derivative from that of the principal, and may be considered as the shadow of a substance. That by the reversal of an attainder against a principal, the attainder against the accessary, which depends upon the attainder of the principal, is *ipso facto* utterly defeated and annulled. And that though the charge against the accessary in this indictment of which the jury had found him guilty, is as accessary to the "*said felony and burglary*," yet that the word felony, as thus used, is only descriptive of the character of the burglary, and by no means applies to any other or different offence. That in an indictment against an accessary to a murder, the charge would be laid against him as accessary to the "said *felony* and murder," but would not import two crimes, or any other crime than that which the law denominates murder. That upon the whole, therefore, the charge against *Vaughan* could only be considered as a charge of being accessary to a supposed burglary by *Donally*; and that as the jury had negatived such burglary they ought consequently to have acquitted *Vaughan*. *Graham* B., who tried the prisoners, respited judgment upon these objections, which, in *Michaelmas* Term following, were argued before the twelve judges in the Exchequer chamber. The opinion of the judges was not formally communicated; but it is understood to have been unanimous in favour of the objection on behalf of *Vaughan*; and in the proportion of ten to two in favour of the objection on behalf of *Donally*. 1 *Russ*. 40, 41. (n.) 2 *Marsh*. 571. S. C.

And as in point of *law*, so also in point of *fact*, if it shall manifestly appear in the course of the accessary's trial that the principal was innocent, common justice seemeth to require that the accessary should be acquitted. *A*. is convicted upon circumstantial evidence, strong as that sort of evidence can be, of the

murder of *B.*; *C.* is afterwards indicted as accessary to this murder; and it cometh out upon the trial by incontestible evidence that *B.* is still living; (Lord *Hale* somewhere mentioneth a case of this kind;) is *C.* to be convicted or acquitted? The case is too plain to admit of a doubt. Or suppose *B.* to have been in fact murdered, and that it should come out in evidence, *to the satisfaction of the court and jury*, that the witnesses against *A.* were mistaken in his person, (a case of this kind Mr. Justice *Foster* says he has known,) and that *A.* was not nor could possibly have been present at the murder. *Fost.* 367, 368.

Accessary acquitted may be indicted as principal.

If one person be indicted as principal, and another as accessary, and both be acquitted, yet the person indicted as accessary may be indicted as principal, and the former acquittal as accessary is no bar. 1 *Hale*, 626.

Whether the principal acquitted may be indicted as accessary before.

But if a person be indicted as principal, and acquitted, he shall not be indicted as accessary *before*: And if he be, he may plead his former acquittal in bar, for it is in substance the same offence. 1 *Hale*, 626.

But Mr. Justice *Foster* observes upon this, that in the eye of the law the offences of principal and accessary do specifically differ; and if a person indicted as principal, cannot be convicted upon evidence tending barely to prove him to have been accessary before the fact, which must needs be admitted, it doth not appear how an acquittal upon one indictment can be a bar to a second for an offence specifically different from it. *Fost.* 362.

And the distinction is also taken in *R.* v. *Winifred Gordon*, 1 *East's P. C.* 352: and there it was held by all the judges, that *W. G.* having been indicted as accessary before the fact, and acquitted upon that indictment, might be indicted again as principal.

Principal acquitted may be indicted as accessary after.

So if a man be indicted as principal, and acquitted, he may be indicted as accessary *after*, for they are offences of several natures. 1 *Hale*, 626.

Accessary before acquitted may be indicted as accessary after.

And so it is if he be indicted as accessary *before*, and acquitted; yet for the same reason he may be indicted as accessary *after*. *Id.*

Where the proceedings are against the accessary only, the name of the principal should be stated in the indictment, if it be known; and where it was stated in an indictment against an accessary to a felony, that the felony was committed by a *person to the jurors unknown*; and it appeared that the principal felon was a witness before the grand jury, it was held that the indictment could not be supported. *R.* v. *Walker, Gloucester Sum. Ass.* 1812. *cor. Le Blanc* J. 3 *Campb.* 264.

If a charge against an accessary is, that the principal felony was committed by persons unknown, it is no objection that the same grand jury found a bill imputing the principal felony to H. M.

R. v. *James Bush, jun.* The prisoner was tried before *Garrow* B., at *Gloucester Sum. Ass.* 1818, was convicted, and received sentence of transportation for 14 years, but execution was staid in order that the opinion of the judges might be taken upon the propriety of the conviction. The indictment stated, that a certain person or certain *persons*, to the jurors *unknown*, the dwelling-house of *Hannah Wilmot* burglariously did break and enter, and certain silver plate, commonly called a silver cream-jug, her goods, did steal, and that *Bush* feloniously did receive and have the same, he then and there well knowing the same to have been feloniously and burglariously stolen, &c.

Rex v. *James Bush*, jun.

Upon the trial it appeared that among the records of indictments returned by the same grand jury, there was one charging one *Henry Moreton* as principal in the burglary, and the present prisoner *Bush* as accessary after, in receiving the cream-jug. Mrs. *Wilmot* proved that her house had been broken but once, that she had lost only one cream-jug, and that she had preferred two indictments to the grand jury. The counsel for the prosecution had declined to proceed on the indictment against *Moreton*. *Ludlow*, for the prisoner, objected, that the allegation in the present indictment, that the person or persons who committed the burglary, were unknown to the jurors, is negatived by the other record, and that the prisoner was entitled to an acquittal. On case, and question whether the finding of the bill by the grand jury did not imply that the principal felons were known, the judge thought not, and conviction right. *M. T.* 1818. *MS. C. C. R.*

V. Particular Statutes against Receivers of Stolen Goods.

3 W. & M. c. 9.

By stat. 3 *W.* & *M. c.* 9. § 4. If any person shall buy or receive any stolen goods, knowing the same to be stolen, he shall be deemed an accessary after the fact, and shall incur the same punishment as an accessary, &c. after the felony committed.

5 Ann. c. 31. **Receiving stolen goods, or harbouring felons.**

By stat. 5 *Ann. c.* 31. § 5. If any person shall buy or receive any stolen goods or chattels, knowing them to be stolen, or shall receive, harbour, or conceal any burglars, felons, or thieves, knowing them to be so, he shall be deemed accessary to the felony; and being convicted on the testimony of one witness, sha'l suffer death as a felon convict [but within clergy.*]

4 Geo. 1. c. 11. **Transportation for 14 years.**

By stat. 4 *G.* 1. *c.* 11. § 1. *any person or persons convicted of receiving or buying stolen goods, knowing them to be stolen, may be transported* for the term of 14 years. See 1 *East*, 309.

But they must pray the benefit of the statute. 2 *East's P. C.* 774. And the felony must be such as admits of accessaries at law. *R.* v. *Evans, O. B.* 1749. *Fost.* 73. 2 *East's P. C.* 744.: for if the principal be convicted of petit larceny only, the receiver of the goods is not punishable as an accessary, though the words of the statute be general; as was holden in *Evans*'s case by all the judges: But this has been since supplied by the stat. 22 *G.* 3. *c.* 58. after mentioned, with certain exceptions.

22 G. 3. c. 58.

In the case of *R.* v. *Davidson*, at *Carlisle* Assizes 1766; *Margaret Davidson* was indicted for stealing bags, containing 160*l.* in money, out of a dwelling-house; and *Isabel* and *Margaret Carter* were indicted in one count for receiving the money, knowing it to have been stolen; and in a second count, for harbouring and concealing *Margaret Davidson*, knowing her to have been guilty of that felony. And an objection being made that *money* is not within the acts of parliament relating to receivers of stolen goods, the judge (Mr. J. *Bathurst*) was clearly of that opinion; and that the counsel for the prosecutor should therefore apply their evidence only to the charge of harbouring and concealing the felon. They

* These words were in former editions, but are not in this statute.

were all convicted, and the principal received judgment of death; the accessaries had their clergy, and were burned in the hand.

Note. It is observable that in the former part of stat. 4 *G*. 1. *c*. 11. § 1., in which it is enacted that certain offenders may be transported for the term of seven years, amongst other offenders are named "persons feloniously stealing or taking *money* or goods and chattels," but "persons convicted for receiving or buying stolen goods, knowing them to be stolen," are excepted.

Receiver how punishable when principal not found.

Notwithstanding that regularly the accessary cannot be tried until the principal be convicted, yet by stat. 1 *Ann. stat.* 2. *c*. 9. § 2. it is enacted, that it shall be lawful to prosecute and punish persons who buy or receive any stolen goods, knowing the same to have been stolen, as for a misdemeanor, to be punished by fine and imprisonment, *though the principal felon be not before convicted* of the felony; which shall exempt the offender from being punished as accessary, if the principal shall be afterwards convicted.

5 Ann. c. 31.

And by stat. 5 *Ann. c*. 31. § 6. it is enacted, that *if the principal felon cannot be taken so as to be prosecuted and convicted*, yet nevertheless the person buying or receiving stolen goods, knowing the same to be stolen, may be prosecuted as for a misdemeanor, and punished by fine and imprisonment, or other such corporal punishment as the court shall think fit, which shall exempt him from being punished as accessary, if the principal shall afterwards be taken and convicted.

But stat. 4 *G*. 1. *c*. 11., which subjects receivers to transportation for 14 years, does not extend to prosecutions under the statutes of *Anne* for a misdemeanor only. And where the principal is amenable to justice, the receiver ought still to be prosecuted as an accessary to the felony, and not for a misdemeanor only. *By all the judges*, 2 *MS. Sum*. 399. *Fost*. 373.

Jonathan Wild was indicted for a misdemeanor, in receiving stolen goods, knowing them to have been stolen. Upon the prosecutor's evidence it appeared that the felons had been convicted and executed. Whereupon it was objected that this indictment would not lie, being only given in case where the felon cannot be taken, this being only a jurisdiction given under these particular circumstances. And *Pratt* C.J. being of that opinion, the defendant was acquitted. *Jonathan Wild's case*, *O. B*. 5 *G*. 1. 2 *East's P. C*. 746.

W. Wilkes was convicted on stat. 3 *W.& M. c*. 9. § 4., and 5 *Ann. c*. 31. § 6. as for a misdemeanor in receiving stolen goods; but it appearing that the prosecutor had had an opportunity of taking the principal, which he had neglected to do, though the latter could not be taken at the time of finding the indictment, judgment was respited until the opinion of the judges could be taken. In Trinity term, 1774, seven of the judges against four, were of opinion that there ought to be judgment on the conviction. The four other judges thought that where a prosecutor had it once in his power to take the principal, and neglected it, it took the case out of the statutes. But the seven held that the word "*cannot*" in the statute, must be applied to the time of the prosecution for the misdemeanor, if the principal be then without collusion out of custody; which was the case here. *Wilkes's case*, *Warwick Lent Ass*. 1774. 2 *East's P. C*. 746.

22 G. 3. c. 58.

But now by stat. 22 *G*. 3. *c*. 58. § 1. after reciting that whereas

22 G. 3. c. 58.

Persons buying or receiving stolen goods, shall be deemed guilty of a misdemeanor, and prosecuted accordingly.

the pernicious practices of buying and receiving stolen goods are become a great evil, by reason of the difficulty of discovering the persons guilty of the same, and of the insufficiency of the laws now in being for the punishment of such offenders, in certain cases; it is enacted, "that in all cases whatsoever where any goods or chattels except lead, iron, copper, brass, bell-metal, and solder," (the receiving of which is provided for by stat. 29 G. 2. c. 30. after mentioned,) "shall have been feloniously taken or stolen, whether the offence of the person or persons so taking or stealing the same, shall amount to grand larceny, or some greater offence, or to petit larceny only (except where the person or persons actually committing the felony shall have been already convicted of grand larceny, or of some greater offence), every person who shall buy or receive any such goods and chattels, knowing the same to have been so taken or stolen, shall be held and deemed guilty of, and may be prosecuted for, a misdemeanor, and shall be punished by fine, imprisonment, or whipping, as the court of quarter sessions, who are hereby empowered to try such offender, or as any other court before which he, she, or they, shall be tried, shall think fit to inflict; although the principal felon or felons be not before convicted of the said felony, and whether he, she, or they, is or are amenable to justice or not. And in cases where the felony actually committed shall amount to grand larceny, or to some greater offence, and where the person or persons actually committing such felony shall not be before convicted, such offender or offenders shall be exempted from being punished as accessary or accessaries, if such principal felon or felons shall be afterwards convicted."

Justices may grant search warrants to discover stolen goods.

§ 2. Enacts "That it shall and may be lawful for any one justice of the peace, upon complaint made before him upon oath, that there is reason to suspect that stolen goods are knowingly concealed in any dwelling-house, out-house, garden, yard, croft, or other place or places, by warrant under his hand and seal, to cause every such dwelling-house, out-house, garden, yard, croft, or other place or places, to be searched in the day-time; and the person or persons knowingly concealing the said stolen goods, or any part thereof, or in whose custody the same, or any part thereof, shall be found, he, she, or they, being privy thereto, shall be deemed and held guilty of a misdemeanor, and shall and may be brought before any justice of the peace for the county, city, town corporate, riding, division, liberty, or place, and made amenable to answer the same, by like warrant of any such justice, and being thereof convicted by due course of law shall be punishable in the manner aforesaid."

Punishment of persons in whose custody they are found.

Constables, &c. may apprehend persons suspected of having any stolen goods, between sunsetting, and sunrising, &c.

§ 3. Enacts "That every constable, headborough, or tithingman, in every county, city, town corporate, riding, division, liberty, or other place where there shall be officers, and every beadle within his ward, parish, or district, and every watchman, during such time only as he is on his duty, shall and may apprehend, or cause to be apprehended, all and every person and persons who may reasonably be suspected of having, or carrying, or any ways conveying, at any time after sunsetting, and before sunrising, any goods or chattels suspected to be stolen, and the same, together with such person or persons, as soon as conveniently may be, to convey or carry before any justice of the peace for the county, city, town corporate, riding, division, liberty, or place aforesaid, to be

dealt with according to law; and such person and persons, so carrying or conveying such goods or chattels, knowing the same to have been stolen, and being thereof convicted, by due course of law, shall be deemed and held to be guilty of a misdemeanor, and on conviction as aforesaid, shall be imprisoned for any time not exceeding six calendar months, nor less than three calendar months."

22 G. 3. c. 58.

Persons offering stolen goods to be pawned or sold, shall be taken before a justice.

§ 4. Enacts "That every person, to whom any goods or chattels, which have been feloniously stolen or taken, shall be brought and offered to be sold, pawned, or delivered, shall, and is hereby impowered and required (there being reasonable cause to suspect that such goods or chattels were stolen) to apprehend, secure, and carry before a justice of the peace for the county, city, town corporate, riding, division, liberty, or place, where the same goods and chattels shall be so brought or offered to be sold, pawned, or delivered, (having it in his or her power so to do), the person and persons bringing or offering the same."

Sheep.

On the construction of the statutes *W. & M. & Anne*, it has been holden that they include *sheep;* and by the same reasoning *fowls* and *other animals*. 2 *East's P. C.* 748.

Money.

But it is clearly settled that the receivers of *money* are not within the words "goods and chattels," in those acts, for if every receiver of money which happened to have been stolen were liable to be called to account for it, it might be attended with serious inconvenience to the public in their general dealings; it being always difficult, and sometimes impossible, to account for the possession of each individual coin which passes in circulation. (See *ante*, the note to *R.* v. *Davidson*, p. 15.) 2 *East's P. C.* 748.

Bank-notes, not within the statutes.

In analogy to this, it was ruled by a majority of the judges (seven) in 1787, that *bank-notes* were not within the statutes against such receivers. *R.* v. *Sadi* and *Morris, O. B. July* 1787. 2 *East's P. C.* 748. 2 *Russ.* 1308, 1309.

This point has recently been considered by the judges in a case reserved by *Richardson* J. *at Gloucester Lent Assizes*, 1819.

Ann Gaze was convicted of stealing certain promissory notes for the payment of money, and *William Gaze* (her husband) of receiving the said notes, knowing them to have been stolen; but on case reserved, eleven judges in East. T. 1819, (*Abbott* C.J. absent) were unanimous that *William Gaze* was not rightly convicted, and they founded their opinion upon the reason assigned by *Ashhurst* J. in *R.* v. *Sadi* and *Morris*, which was, that though a statute which creates a new felony will attach to that felony all the common law incidents to felony, so that accessaries thereto will be included, it will go no further, and a receiver of the goods not being a common law accessary, is not included. *R.* v. *A. Gaze* and *W. Gaze, Gloucester Lent Ass.* 1819. *M. S. C. C. R.*

3 G. 4. c. 24

But now, by stat. 3 *G.* 4. *c.* 24. § 1., after reciting that whereas by stat. 2 *G.* 2. *c.* 25., intituled *An act for the more effectual preventing and further punishment of forgery, perjury, and subornation of perjury, and to make it felony to steal bonds, notes, or other securities for payment of money*, it was enacted, amongst other things, that if any person or persons should steal or take by robbery any exchequer orders or tallies, or other orders, entitling any other person or persons to any annuity or share in any parliamentary fund, or any exchequer bills, bank notes, *South Sea* bonds, *East India* bonds, dividend warrants of the Bank, *South*

Sea company, *East India* company, or any other company, society, or corporation, bills of exchange, navy bills or debentures, goldsmiths' notes for payment of money, or other bonds or warrants, bills or promissory notes for the payment of any money, being the property of any other person or persons, or of any corporation, notwithstanding any of the said particulars were termed in law a *chose in action*, it should be deemed and construed to be felony with or without the benefit of clergy, according to the nature of the case, as specified and provided for by the said act: and whereas no provision was made by the said act for the prosecuting and punishment of persons receiving or buying any such orders, tallies, bills, bonds, warrants, debentures, or notes, knowing the same to have been stolen: and whereas it is expedient that such persons should be liable to be prosecuted and punished in like manner as persons receiving or buying stolen goods or chattels, knowing the same to have been stolen, are liable to be prosecuted and punished: it is enacted that "all persons who shall receive or buy any exchequer order or tally, or other order, entitling any other person or persons to any annuity or share in any parliamenty fund, or any exchequer bill, bank note, *South Sea* bond, *East India* bond, dividend warrant of the Bank of *England*, *South Sea* company, *East India* company, or any other company, society or corporation, bill of exchange, navy bill or debenture, goldsmiths' note for the payment of money, or other bond, order or warrant, bill or promissory note for payment of money, knowing the same to have been stolen, shall be liable to be prosecuted and punished respectively for felony or misdemeanor, as the case may be, in like manner as persons receiving or buying stolen goods and chattels, knowing the same to have been stolen, are by the laws now in force liable to be prosecuted and punished." See 2 *East's P. C.* 597. 601. and Stat. 3 *G.* 4. *c.* 114. tit. Judgments, and see tit. Larceny, Vol. III.

Persons receiving or buying any bond or other security for the payment of money, knowing the same to have been stolen, may be prosecuted as persons receiving stolen goods.

§ 2. Enacts, "that all powers, provisions, and enactments, contained in the several acts now in force, relative to the searching for and discovery of stolen goods and chattels, and to the apprehending, prosecuting, and punishing of persons receiving or buying stolen goods or chattels, knowing the same to have been stolen, shall extend, and be deemed and construed to extend, to the searching for and discovery of any such stolen order, tally, bill, bond, warrant, debenture, or note; and to the apprehending, prosecuting, and punishing of persons receiving or buying any such stolen order, tally, bill, bond, warrant, debenture, or note, knowing the same to have been stolen, in the same manner as if the said powers, provisions, and enactments were herein severally recited and re-enacted."

Provisions of 2 G. 2. c. 25. extended to this act.

§ 3. Enacts, "that in all cases where the offence of any person receiving or buying stolen goods or chattels, or any such stolen order, tally, bill, bond, warrant, debenture, or note, knowing the same to have been stolen, shall be deemed and construed to be felony, such offender shall and may be tried and convicted of such felony, as well before as after the trial of the principal felon, and whether the said principal felon shall have been apprehended, or shall be amenable to justice, or not."

Offenders may be convicted whether before or after conviction of principal offender.

The indictment against a receiver of stolen goods need not allege time and place to the fact of stealing the goods: it is

Indictment against receivers.

sufficient if they be alleged to the fact of the receipt. 2 *East's P. C.* 780.

Principal unknown.

In the case of *John Thomas* the indictment was for receiving goods stolen by persons unknown, which was objected to be insufficient in not ascertaining the principal thief, and that it ought to appear to whom in particular the prisoner was accessary. This objection being referred to the judges, they were unanimously of opinion that the indictment was good; that the great view of the statutes was to reach the receivers where the principal thieves could not easily be discovered. *Thomas*'s case, *O. B. May* 1766. 2 *MS. Sum.* 477. 2 *East's P. C.* 781.

Where the principal, however, is known, it seems proper to state it according to the truth: and the common form of the indictment is to state the fact of stealing the goods by the principal, and the receipt of them by the receiver, he then and there well knowing the said goods and chattels to have been feloniously stolen, &c. It is sufficient in an indictment for felony against a receiver of stolen goods, to state that the principal was "*tried and duly convicted*," without going on to show what *judgment* was passed upon him, or how he was delivered. *Hyman's case*, 2 *Leach*, 925.

In an indictment for a misdemeanor against a receiver of stolen goods, an averment that the principal has not been convicted, is unnecessary. *R.* v. *Baxter*, 5 *T. R.* 83.

13 G. 3. c. 31. Trial of receivers of property stolen in some other part of the U. K.

With respect to the trial of offenders receiving goods stolen in some other part of the U. K. [i. e. *England* or *Scotland*,] the Stat. 13 *G*. 3. *c*. 31. § 5. enacts that any person in either part of the U. K., receiving or having any money, cattle, goods, or other effects feloniously taken in the other part of the U. K., knowing the same to be feloniously taken, may be indicted, tried, &c. in that part of the U. K. where he received the same, as if the same had been feloniously taken in that part of the U. K. And since the union with *Ireland*, the Stat. 44 *G*. 3. *c*. 92. § 8. makes a general provision, and enacts, "that if any person or persons in any one of the parts of the U. K., shall hereafter receive or have any cattle, goods, or other effects, stolen or otherwise feloniously taken in any other part of the U. K., knowing the same to have been stolen or otherwise feloniously taken, every such person shall be liable to be indicted, tried and punished for such offence in that part of the U. K., where he, she, or they shall so receive or have the said cattle, goods, or other effects, in the same manner to all intents and purposes, as if the said cattle, goods, or other effects, had been originally stolen or otherwise feloniously taken in that part of the U. K., in which such person shall so receive or have such cattle, goods, or other effects respectively." (*a*)

44 G. 3. c. 92.

The legislature has also made particular provisions in a variety of cases against the receivers of certain stolen goods.

29 G. 2. c. 30. Receivers of stolen lead, &c.

Stat. 29 *G*. 2. *c*. 30. (after reciting that "the pernicious practice of stealing lead, iron, copper, brass, bell-metal and solder fixed to, or lying or being in or upon houses, out-houses, mills, warehouses, workshops and other buildings, areas, vaults, yards, gardens, orchards or other places; and also the stealing of such

(*a*) This act, and also the 45 G. 3. c. 92. and the 54 G. 3. c. 186. provide for the more easy apprehending and trying of offenders escaping from one part of the U. K. to the other.

29 G. 2. c. 30.

materials from ships, barges, lighters, boats and other vessels and craft, upon navigable rivers, in ports of entry or discharge, creeks and docks belonging thereto, and also from off wharfs, keys and other places, is become a great and notorious evil, by reason of the difficulty in apprehending and convicting the thieves, and the still greater difficulty of discovering and convicting the buyers or receivers thereof; which buyers or receivers are the principal cause of the commission of such thefts; and in regard that the said offences are committed in such close and clandestine manner, that there can be no witness or witnesses to the same, but such who is or are partakers of the offence: and whereas if the buyers and receivers of lead, iron, copper, brass, bell-metal or solder, knowing or having reasonable cause to suspect the same to be stolen or unlawfully come by, were made original offenders, and punishable independent of the apprehension and conviction of the thief; and if the apprehending, prosecuting and convicting the offenders in both kinds were rendered more easy and speedy, it might more effectually tend to the discovery and suppression of the said offences:") For remedy whereof enacts,

Buyers, &c. of materials, knowing same to be stolen, &c.

"That from and after the 1st of October 1756, every person who shall buy or receive any lead, iron, copper, brass, bell-metal or solder, knowing the same to be stolen or unlawfully come by, or shall privately buy or receive any stolen lead, iron, copper, brass, bell-metal or solder, by suffering any door, window or shutter to be left open or unfastened between sun-setting and sun-rising for that purpose, or shall buy or receive the same, or any of them, at any time in any clandestine manner from any person or persons whatsoever, shall, being thereof convicted by due course of law, although the principal felon or felons has not or have not been convicted of stealing the same, be transported for 14 years to any of his majesty's colonies or plantations in *America*, according to the laws in force for the transportation of felons."

Transportation for 14 years.

By § 2. Any one justice of the peace, upon complaint made to him upon oath by any credible person, that there is cause to suspect stolen lead, iron, copper, brass, bell-metal or solder is concealed in any dwelling-house, out-house, yard, garden or other place, may, by warrant under his hand and seal, cause every such dwelling-house, &c. to be searched in the day-time; and if any of the same suspected to be stolen shall be found therein, he may cause the same, and the person in whose house or other place the same shall be found, to be brought before any two or more justices for the same county, &c.: And if such person shall not give an account to the satisfaction of such justices how he came by the same; or shall not, within some convenient time to be set by the said justices, produce the party of or from whom he bought or received the same, then he shall be adjudged guilty of a misdemeanor.

On cause of suspicion, justice to issue search warrant.

By § 3. And every constable, head-borough or tithing-man, where they shall be officers, beadle within his district, and watchman whilst he is upon duty, shall apprehend or cause to be apprehended every person who may reasonably be suspected of having, carrying, or conveying, after sun-setting and before sun-rising, any of the said materials, suspected to be stolen or unlawfully come by; and the same, together with such person, as soon as conveniently may be, shall carry before any two justices for the

Suspected persons in the night-time may be apprehended, &c.

county, &c.: And if the person so apprehended conveying the same shall not produce the person from whom he bought or received the same, or some other credible witness to depose upon oath the sale or delivery thereof, or shall not give an account, to the satisfaction of any two such justices, how he came by the same, then he shall be adjudged guilty of a misdemeanor.

29 G. 2. c. 30.

By § 4. In case of conviction of either of the said misdemeanors, any two such justices may cause the same to be deposited with the churchwardens and overseers of the poor where the same were found, or in any other convenient place, for any time not exceeding 30 days, and in the meantime may order the said churchwardens and overseers, or one of them, in every parish within the bills of mortality, to insert an advertisement in some public paper, and in every other parish or place cause notice to be given by some public cryer, and by fixing on the church or chapel door, notice describing such materials, and where deposited: And if any person can prove his property thereto upon oath, to the satisfaction of any two such justices, they shall order restitution thereof to the owner, after paying reasonable charges of removing, depositing, and giving public notice of the same. And if at the end of 30 days no person shall prove his property thereto, the same shall be sold for the best price that can reasonably be had; and after deducting the charges as aforesaid, half of the money arising from such sale shall be given to the person apprehending, and half to the poor of the parish where the offence shall be committed (if it is known where), or else where the conviction shall be made.

In which cases materials to be deposited with churchwarden, &c.

Owner proving his property to have them.

By § 5. Every person to whom any of the same shall be brought and offered to be sold, pawned or delivered, (there being reasonable cause to suspect that the same was stolen or unlawfully come by,) shall apprehend, secure, and carry before a justice for the county, &c. where the same shall be so brought or offered, (having it in his power so to do) the person so bringing or offering the same, together with the said materials; and such person shall be dealt with, and the said materials shall be deposited and disposed of, as if he had been apprehended by the constable, beadle or watchman. And if it shall appear upon the oath of any person, notwithstanding he was concerned in stealing the same, if corroborated with other credible circumstances, to the satisfaction of two such justices, that there was reasonable cause to suspect that the same was stolen or unlawfully come by, and that the person to whom the same was brought or offered did not (having it in his power so to do) apprehend, secure and carry before a justice as aforesaid, the person who brought or offered the same; then the person to whom the same was brought or offered shall be adjudged guilty of a misdemeanor.

Pawnbrokers, &c. may stop such materials on suspicion.

By § 6. Persons for the two former misdemeanors, in so having or so conveying any of such suspected materials, shall in each case forfeit for the first offence 40*s.*, for the second 4*l.*, and for every subsequent offence 6*l.*; and for the other misdemeanor, in not carrying such suspected person before a justice, shall forfeit for the first offence 20*s.*, for the second 40*s.*, and for every subsequent offence 4*l.*, to be levied by distress by warrant of the two convicting justices, half to the informer, and half to the over-

Penalties.

29 G. 2. c. 30.

seers for the use of the poor where the offence was committed, (if known,) or otherwise where the conviction shall be. And if no sufficient distress shall be found, then the person convicted shall be committed to the common gaol or other prison, or house of correction, for one month for the first offence, for the second, two months, and for every subsequent offence, till discharged by order of sessions.

Conviction.

The conviction to be on parchment, and to be certified to the next sessions, and there filed; in the form, or to the effect following, viz.

Middlesex, to wit. } *BE it remembered, that on the* ——— *day of* ——— *in the year* ——— A. O. *was convicted before us* ——— *of the justices of the peace for the county, city, riding, division, liberty, or place aforesaid,* (as the case shall be,) *of a misdemeanor, in having in his, her or their possession lead, iron, copper, brass, bell-metal or solder suspected to be stolen or unlawfully come by, and not producing the party or parties of whom he, she or they bought or received the same, nor giving a satisfactory account how he, she or they came by the same,* or *in having, carrying or conveying of lead, iron, copper, brass, bell-metal or solder suspected to be stolen or unlawfully come by, and not producing the party or parties from whom he, she or they bought or received the same, nor any credible witness to depose upon oath the sale or delivery thereof, or not giving a satisfactory account how he, she or they came by the same,* or *of neglecting to apprehend and secure the person or persons who brought and offered to pawn, sell or deliver lead, iron, copper, brass, bell-metal or solder suspected to be stolen or unlawfully come by* (as the case shall be).

Given under our hands and seals the day and year aforesaid.

§ 7. Which conviction shall not be quashed for want of any other form or words, nor shall be removable by *certiorari*, but shall be final to all intents and purposes.

Discovering offenders.

§ 8. And if any person, being out of prison, shall commit any felony by stealing any lead, &c. and afterwards discover two or more persons who shall buy or receive any stolen lead, &c. knowing the same to be stolen, so as two or more be convicted, he shall have a pardon, which shall be likewise a bar to an appeal.

Lead, iron, brass, &c.

§ 9. And if any person shall be concerned in stealing any lead, &c. and shall afterwards, being out of prison, discover any person to whom he shall have offered to sell, pawn, or deliver any stolen lead, &c. so as he be convicted of the misdemeanor of not apprehending, securing and carrying him before a justice, he shall not be liable to be prosecuted for stealing such lead so offered, &c.

By § 11. This shall not extend to repeal any former law then in being for the punishment of such offenders: but no offender punished by this act shall be afterwards liable to be punished by any such former law.

It appears to have been considered at one time, that the statute 29 *Geo.* 2. *c.* 30. related only to the metals mentioned in it, when in their common, or raw state, as contradistinguished from wrought

goods. *Scott's case. cor. Adair* Serjt. C. J. *of Chester.* — *Chester Spr. Ass.* 1798. cited in 2 *East's P. C.* 752. — 2 *Russ.* 1353.

Dolphin's case. Manufactured articles of brass, &c. becoming broken after they have been manufactured, are within the stat. 29 G. 2. c. 30. And it seems also, that manufactured articles of brass, &c. whether broken or unbroken, are within the statute.

It seems, however, that metals, though in a manufactured state, are deemed to be within the statute. A case occurred at Staffordshire Michaelmas Sessions, 1816, in which the subject underwent considerable discussion. The prisoner was indicted for unlawfully receiving a quantity of brass and copper, knowing it to have been stolen, and unlawfully come by, against the form of the statute, &c. It appeared in evidence, that the articles received by the prisoner were brass and copper sockets, which form part of the moveable machinery used in spinning cotton, and are from time to time detached from the fixed machinery, and carried from place to place, for the purpose of discharging the cotton twist originally wound thereon. At the time of their being stolen, part of them were broken into pieces; the rest were whole, in the state in which they had been manufactured. With respect to the latter, the evidence was rejected, on the ground that the statute had uniformly been construed to extend to articles of the description therein mentioned, in their common or unmanufactured state, as iron and lead in pigs or sheets, bars of brass and copper, &c., and not to wrought or manufactured articles. But the evidence was admitted as to the broken sockets, they being considered as mere pieces of brass and copper, to which no appropriate name could be given; and the prisoner, upon that evidence, was found guilty. It was contended, on behalf of the prisoner, that the statute did not apply to these broken pieces of metal; and it was strongly urged, that it would be an extraordinary construction to suppose that the legislature should have protected, by a statute so highly penal, articles damaged and broken, and consequently of small value. The Chairman said, that whatever his own opinion might be, he considered it his duty to reserve the point for the opinion of the judges of assize: and at the succeeding quarter-sessions, he stated that several of the judges had very kindly permitted him to confer with them upon the question in this case, whether the broken sockets, by the circumstance of their becoming broken, after they had been manufactured, lost the character of manufactured articles, so as to fall within the statute; and that those learned judges clearly thought the conviction right. And he further stated that they were also of opinion, that *manufactured* articles of brass, &c. whether broken or unbroken, were within the statute. *Dolphin's case, Staffordshire Mich. Quart. Sess.* 1816, and *Epiph. Quart. Sess.* 1817. MS. 2 *Russ.* 1355.

And in a subsequent case the same doctrine was acted upon by *Burrough* J. in respect of articles which had become broken, after having been manufactured. *Rex* v. *Wilson* and *Wife, Stafford Lent Ass.* 1817. MS. On this occasion Mr. *Manley, amic. cur.* cited from the MS. of Mr. Serjt. *Manley*, a note of a case of *Rex* v. *Metcalfe*, on the *Chester* circuit at *Mold, Sept.* 10, 1808, in which *Dallas* C. J. said, "a doubt arose on the construction of this act, — whether wrought articles were within it, or whether it was not confined to goods in an unwrought state: but we are clear that the act extends to wrought goods, and to all goods mentioned in it, whether manufactured or not." 2 *Russ.* 1356. n. (*m.*)

Where an offender is convicted of receiving stolen iron under the value of a shilling, it seems that judgment of transportation must be given under 29 G. 2. c. 30.

In a case where the prisoner had been convicted at a quarter-sessions, on an indictment, charging him with a misdemeanor in receiving stolen iron of a value under one shilling, knowing it to be stolen, and had received judgment of imprisonment for a year; after which the record was removed by writ of error into the court of *K. B.*; that court, without giving a direct opinion on the subject, intimated great doubt, whether, as the general act of the 22 *G.* 2. *c.* 58. expressly excepts iron, any other judgment could be passed than that of transportation, directed by the statute 29 *G.* 2. *c.* 30.: and upon this doubt the counsel for the prisoner waived any further prosecution of the writ of error. *Rex* v. *Stot, Hil.* 39 *Geo.* 3. 2 *East, P. C. c.* 16. § 144. p. 753.

21 G. 3. c. 69. Receivers of pewter vessels.

By stat. 21 *G.* 3. *c.* 69. every person who shall buy or receive any pewter pot or other vessel, or any pewter in any form or shape whatever, knowing the same to be stolen or unlawfully come by; or shall privately buy or receive any stolen pewter, by suffering any door, window, or shutter to be left open or unfastened between sun-setting and sun-rising for that purpose; or shall buy or receive the same at any time in any clandestine manner, he shall, although the principal felon has not been convicted, be transported not exceeding seven years, or detained in prison, and therein kept to hard labour, not more than three years nor less than one; and within that time (if the court shall think fitting) to be once or oftener, but not more than thrice, publicly whipped.

22 G. 3. c. 58. Discovering two accomplices.

And by 22 *G.* 3. *c.* 58. § 5. if any person, being out of custody, or in custody, if under 15 years of age, upon any charge of felony within benefit of clergy, shall have committed any felony, and shall afterwards discover two or more persons who shall have bought or received any goods or chattels, which shall have been feloniously stolen or taken from any other person or persons, knowing the same to be stolen, so as two or more be convicted, he shall have a pardon for all such felonies by him committed before such discovery; which pardon also shall be likewise a bar to any appeal brought for such felony.

2 G. 3. c. 28. Receivers of part of a cargo of a ship.

By 2 *G.* 3. *c.* 28. § 12. every person who shall buy or receive any part of the cargo, or any goods, stores, or things of or belonging to any ship or vessel in the *Thames*, knowing the same to be stolen or unlawfully come by; or shall privately buy or receive any such goods, &c. or any part thereof, by suffering any door, window, or shutter to be left open or unfastened between sun-setting and sun-rising for that purpose; or shall buy or receive the same at any time in any clandestine manner from any person whomsoever, shall, being thereof convicted by due course of law, though the principal felon or offender has not been convicted of stealing or unlawfully procuring the same, be transported for 14 years to any of the colonies in *America*, according to the laws in force for the transportation of felons.

In the case of *Rex* v. *Wyer*, 2 *T. R.* 77. the court of K. B. were of opinion that the prisoner might be prosecuted as for a felony for an offence under this section of the act; and they refused to bail him.

39 & 40 G. 3. c. 87.

But the legislature seems to have considered it only as a misdemeanor; for by the statute 39 & 40 *G.* 3. *c.* 87. § 22. (after reciting that by the last-mentioned act, 2 *G.* 3. *c.* 28. persons guilty

of certain offences are punishable by transportation for 14 years, *but the said offences not being by the said act declared to be felony*, the trial thereof may in all cases be put off, by means of a traverse, to the next sessions, after the finding of the bill of indictment for the same, and the offender be in the mean time liberated, on being admitted to bail,) it is enacted, that in such cases the person so indicted shall plead to the same indictment without having time to traverse the same, as is usual in cases of misdemeanors.

Such receivers shall plead instanter.

With regard to the receivers of stolen jewels, &c. it is enacted by the statute 10 *G.* 3. *c.* 48. that every person who shall buy or receive any stolen jewel or jewels, or any stolen gold or silver plate, watch or watches, knowing the same to have been stolen, shall, in all cases where such jewel or jewels, or gold or silver plate, [omitting here the words *watch* or *watches*] shall have been feloniously stolen, accompanied with a burglary actually committed in stealing the same, or shall have been feloniously taken by a robbery on the highway, be triable as well before conviction of the principal felon in such felony and burglary or robbery, whether he shall be in or out of custody, as after his conviction. And if any person so buying or receiving such jewel or jewels, or gold or silver plate [omitting again the words *watch* or *watches*,] shall be convicted thereof, he shall be adjudged guilty of felony, and transported for 14 years.

10 G. 3. c. 48. Receivers of stolen jewels.

A question arose upon this statute in the case of *E. Moses*, who was indicted at the *Kent* summer assizes in 1783, before *Gould* J. The indictment stated that Mr. *Drummond* had been robbed in the highway of a gold watch, gold watch-case, a red cornelian seal set in gold, and a white one also set in gold; and then charged that the prisoner received the same, knowingly against the form of the statute. The prisoner having been convicted, judgment was respited to take the opinion of the judges, whether receiving a gold watch and such seals, knowing them to have been stolen, (being taken by a robbery on the highway,) were a felony within the act? This was first debated by all the judges in Mich. term 1783, and adjourned for further consideration to the Hil. term following; when ten judges present (and one absent and concurring) held that the conviction was proper. Some thought that the gold in the watch might be deemed *plate*; others thought that was not the meaning of the act; but all held that the *seals* set in gold came under the word *jewels*. 2 *East's P. C.* 754.

A cornelian seal is within the act.

It is now agreed that the principal, though not convicted or pardoned, may be examined as a witness against the receiver. In *Patram*'s case, and in *Haslam*'s case, which were prosecutions for the misdemeanor on stat. 22 *G.* 3. *c.* 58. the principal felons, though not convicted, were admitted as witnesses on the part of the crown. The same was done in *Jonathan Wild*'s case, on a prosecution on stat. 4 *G.* 1. *c.* 11. for taking a reward to help to stolen goods. 2 *East's P. C.* 782, 783. *Patram's case, Bridgewater Sum. Ass. cor. Grose J.* 1787. *Haslam's case, O. B.* 1786. 2 *Leach*, 418.

Principal a witness.

Indictment against an Accessary before the Fact, taken from *Coke*'s Report of Lord *Sanchar*'s Case, 9 *Co.* 116, on which *Robert Creighton*, Esquire (Lord *Sanchar*, of *Scotland*) was convicted and hanged; *viz.*

Middlesex. *THE jurors present, for the lord the king upon their oath, That whereas* Robert Carliel *late of* London, *yeoman, and* James Irweng *late of* London, *yeoman, not having God before their eyes, but being seduced by the instigation of the devil, on the eleventh day of* May *in the* 10*th year of the reign of our lord* James, *by the grace of God of* England, France, *and* Ireland *king, defender of the faith, and so forth, and of* Scotland, *the forty-fifth, at* London, *that is to say, in the parish of* St. Dunstan *in the West, in the ward of* Farringdon *without* London *aforesaid,* &c. *with force and arms,* &c. *feloniously, and of their aforethought malice, in and upon one* John Turner, *then and there in the peace of God, and of the said lord the king being, made an assault and affray; and the aforesaid* Robert Carliel *with a certain gun* [tormentum] *called a pistol, of the value of* 5s. *then and there charged with gunpowder, and one leaden bullet, which gun the said* Robert Carliel *in his right hand then and there had and held, in and upon the aforesaid* John Turner, *then and there feloniously, voluntarily, and of his malice forethought, did shoot off and discharge; and the aforesaid* Robert Carliel, *with the leaden bullet aforesaid, from the gun aforesaid then and there sent out, the aforesaid* John Turner, *in and upon the left part of the breast of him the said* John Turner, *then and there feloniously struck, giving to the said* John Turner, *then and there with the leaden bullet as aforesaid, near the left pap of him the said* John Turner, *one mortal wound of the breadth of half an inch, and depth of five inches, of which mortal wound the aforesaid* John Turner *at* London *aforesaid, in the parish and ward aforesaid, instantly died; And that* James Irweng *feloniously and of his forethought malice then and there was present, aiding, assisting, abetting, comforting, and maintaining the aforesaid* Robert Carliel *to do and commit the felony and murder aforesaid, in form aforesaid, and so the aforesaid* Robert Carliel *and* James Irweng *the aforesaid* John Turner, *at* London *aforesaid, in the parish and ward aforesaid, in manner and form aforesaid, feloniously, voluntarily, and of their forethought malice killed and murdered, against the peace of the lord the now king, his crown and dignity;* And that one *Robert Creighton*, late of the parish of *St. Margaret* in the county of *Westminster*, esquire, not having God before his eyes, but being seduced by the instigation of the devil, before the felony and murder aforesaid, by the aforesaid *Robert Carliel* and *James Irweng* in manner and form aforesaid done and committed, that is to say, on the tenth day of *May* in the 10th year of the reign of our lord *James*, by the grace of God, of *England*, *France*, and *Ireland* king, defender of the faith, and of *Scotland*, the forty-fifth, the aforesaid *Robert Carliel*, at the aforesaid parish of *St. Margaret* in *Westminster* aforesaid, in the county of *Middlesex* aforesaid, to do and commit the felony and murder aforesaid, in manner and form aforesaid, maliciously, feloniously, voluntarily, and of his forethought malice did stir up, move, abet, counsel, and procure, against the peace of the said lord the king that now is, his crown and dignity, &c.

If after the Fact, then the form may be thus:

And that A. O. *late of* ——— *in the county of* ——— *yeoman, well knowing the said* (offender) *to have done and committed the said felony in manner and form aforesaid, afterwards, to wit, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *at* ——— *aforesaid in the county aforesaid, with force and arms, him the said* ——— *did then and there feloniously, and of his malice forethought, receive, aid, and comfort; against the peace of the said lord the king that now is, his crown and dignity.*

Indictment against an Accessary for receiving Goods, knowing them to have been stolen, in one County, the Principal having been indicted and convicted in another.

Middlesex. *THE jurors for our lord the king upon their oath present that at the delivery of the gaol of our lord the king of his county of* Dorset, *holden at* Dorchester *in and for the said county of* Dorset, *on the* ——— *day of* ——— *in the* ——— *year of the reign of our sovereign lord* George *the fourth, king of* Great Britain, *before sir* Charles Abbott *knight, lord chief justice of our lord the king assigned to hold pleas in the court of our lord the king, before the king himself, and sir* John Bayley *knight, one other of the justices of our said lord the king, assigned to hold pleas in the court of our said lord the king, before the king himself, then justices of our said lord the king, assigned to deliver the said gaol of the prisoners therein being;* X. Y. *late of the parish of* ——— *in the said county of* Dorset, *labourer, was convicted in due form of law, for that the said* X. Y. *on the* ——— *day of* ——— *in the said* ——— *year of the reign of our said lord the king, with force and arms, at the parish aforesaid, in the county aforesaid, ten yards of* broad cloth *of the value of thirty shillings, of the goods and chattels of one* M. N. *then and there being found, feloniously did steal, take and carry away, against the peace of our said lord the king, his crown and dignity, as by the record thereof remaining filed in the said court of gaol delivery may more fully and at large appear. And the jurors aforesaid upon their oath aforesaid do further present that* A. O. *late of the parish of* ——— *in the county of* Middlesex, *labourer, afterwards, to wit, on the said* ——— *day of* ——— *in the year aforesaid, with force and arms, at the said parish of* ——— *in the county of* Middlesex *aforesaid, the goods and chattels aforesaid, so as aforesaid feloniously stolen, taken and carried away, feloniously did receive and have (he the said* A. O. *then and there well knowing the aforesaid goods and chattels to have been feloniously stolen, taken and carried away) against the form of the statute in that case made and provided, and against the peace of our said lord the king, his crown and dignity.*

Information against an Accessary before the Fact.

Staffordshire, to wit. } *THE information and complaint of* A. B. *of the parish of* ——— *in the said county, gentleman, taken upon oath before me* J. P. *esq., one of his majesty's justices of the peace in and for the said county, this* ——— *day of* ——— *in the year of our Lord one thousand eight hundred and* ———.

Who saith that on ——— *the* ——— *day of* ——— *last,*

his dwelling-house, situate in the parish of ——— *in the said county, was, about the hour of* ——— *in the night of the same day, broken and entered by some person or persons* [or, as the case may be], *and that* [describe the property stolen] *the property of him the said* A. B. [or, of C. D. as the case may be] *was* [or, *were*] *then and there feloniously stolen, and that he hath just cause to suspect, and doth suspect that* E. F. *late of* ——— *aforesaid, labourer, did commit the said felony* [or, as the case may be], *and that* G. H. *late of* ——— *aforesaid, labourer, did counsel, hire, procure, or command the said* E. F. *to commit the said felony* [or as the case may be]. *And thereupon he the said* A. B. *prayeth that justice may be done in the premises.*

Sworn before me, A. B.
J. P.

Warrant to apprehend thereupon.

To the constable of the parish of ——— in the county of *Stafford,* and to all other constables and peace officers within the said county.

Staffordshire, to wit. } *WHEREAS* A. B. *of the parish of* ——— *in the said county of* Stafford, *gentleman, hath this day made oath before me* J. P. *esq., one of his majesty's justices of the peace in and for the said county, that his dwelling-house, situate in the parish of* ——— *in the said county, was, about the hour of* ——— *in the night of the same day, broken and entered by some person or persons* [or, as the case may be], *and that* [describe the property stolen] *the property of him the said* A. B. [or, of C. D. as the case may be] *was* [or, were] *then and there feloniously stolen, and that he hath just cause to suspect, and doth suspect, that* E. F. *late of* ——— *aforesaid, labourer, did commit the said felony* [or, as the case may be], *and that* G. H. *late of* ——— *aforesaid, labourer, did counsel, hire, procure, or command the said* E. F. *to commit the said felony* [or, as the case may be.] *These are therefore in his majesty's name, to charge and command you forthwith to apprehend and bring before me, the said* E. F. *and* G. H. *to answer the said complaint, and to be further dealt with according to law. Given under my hand and seal this* ——— *day of* ——— *one thousand eight hundred and* ———.

J. P. (L. S.)

Commitment thereupon.

To the keeper of his Majesty's gaol at *Stafford,* for the county of *Stafford,* or his deputy.

Staffordshire, to wit. } *RECEIVE into your custody the bodies of* E. F. *and* G. H. *herewith sent you, brought before me* J. P. *esq., one of his majesty's justices of the peace in and for the said county, by* A. C. *constable of the parish of* ——— *in the said county, the said* E. F. *being charged upon the oath of* A. B. *with having on* ——— *the* ——— *day of* ——— *last, feloniously and burglariously broken and entered his dwelling-house, situate in the parish of* ——— *in the said county,* [or, as the case may be], *and feloniously stolen, taken, and carried away* [describe the property stolen] *the property of the said* A. B. [or, C. D. as the case

may be] *and the said* G. H. *being also charged upon the oath of the said* A. B. *with having counselled, hired, procured or commanded the said* E. F. *to commit the said felony and burglary* [or, as the case may be,] *and them safely keep in your custody until they shall be discharged by due course of law. Given under my hand and seal at* ——— *in the said county, this* ——— *day of* ——— *one thousand eight hundred and* ———. J. P. (L. S.)

To prosecute at the next assizes [or, sessions, as the case may require.]

Acquittal.

Form of the Record of an Acquittal on an Information on a penal Statute, before a Justice of the Peace out of Sessions. From *Wms. Prec.* 7. and *Y. C. P.* 53.

Staffordshire, to wit. } *BE it remembered, that on the* ——— *day of* ——— *in the year of our Lord one thousand eight hundred and* ———, *at the town of* Stone, *in the parish of* Stone, *in the said county of* Stafford, A. I. *of the said town of* Stone, *labourer, in his proper person, came before me* J. P. *esq., one of his majesty's justices of the peace in and for the said county, and gave me, the said justice, to understand and be informed, that on the* ——— *day of* ——— *in the year of our Lord one thousand eight hundred and* ———, *at the parish of* Stone, *in the said county, one* A. O. *of* ——— *in the county aforesaid, labourer,* [here state the offence verbatim as charged in the information]; *whereupon it was by the said* A. I. *alleged, that the said* A. O. *had for his said offence, forfeited the sum of* ——— *pounds, one moiety thereof to the said* A. I. [as the case may be]. *And therefore the said* A. I. *prayed the judgment of me, the said justice, in the premises; whereupon afterwards, to wit, on this* ——— *day of* ——— *in the said year of our Lord one thousand eight hundred and* ———, *at* Stone *aforesaid, in the said county, personally appeared before me, the said justice, as well the said* A. I. *to prosecute his said information in this behalf, as the said* A. O. [having been first duly summoned] *to make defence thereto. And the said* A. O. *having heard the said information read, is asked by me, the said justice, if he can say any thing for himself why he should not be convicted of the offence therein charged against him; whereupon the said* A. O. *pleadeth and saith, that he is not guilty of the said offence* [or, if he pleads any special matter, it must be correctly stated]. *Therefore I, the said justice, did proceed to examine into the truth of the said information and complaint, and upon due consideration had of the premises, and upon hearing the proofs and allegations as well of the said* A. O. *as of the said* A. I., *it is hereby considered and adjudged by me, the said justice, that the said* A. O. *be acquitted of the said charge and offence in the said information above contained, and that he do go thereof quit without day. And it is hereby also further ordered and adjudged by me, the said justice, that the said* A. I., *the informant, do forthwith pay to the said* A. O., *the defendant, the sum of* ———, *which I do hereby settle and ascertain as and for the reasonable costs and charges which the said* A. O. *hath been put to in making defence to the said information. In witness whereof I have to this record of acquittal set my hand and seal, at* Stone, *in the said county, this* ——— *day of*

18 G. 3. c. 19.

in the said year of our Lord one thousand eight hundred and -

Cases. See *Rex* v. *Reason*, 6 *T. R.* 375. Et per *Lord Ellenborough* C.J. in *Taylor* v. *Shapland*, 3 *M. & S.* 330. and Stat. 18 *G.* 3. *c.* 19. § 1. *infra* tit. Costs.

Actions against Accomplice. See Evidence.
———— Magistrates. See Justices of the peace.
Action popular. See Information.
Addition. See Indictment.
Adultery. See Lewdness.

Admiralty Court.

A sketch of the jurisdiction of this court in criminal matters may be useful to point out the limits of the common law powers herein.

[See Stats. 15 *R.* 2. *c.* 3. 28 *H.* 8. *c.* 15. 35 *H.* 8. *c.* 2. 11 & 12 *W.* 3. *c.* 7. 2 & 3 *A.* *c.* 20. 4 *G.* 1. *c.* 11. 6 *G.* 1. *c.* 19. 8 *G.* 1. *c.* 24. 2 *G.* 2. *c.* 28. 18 *G.* 2. *c.* 30. 32 *G.* 2. *c.* 25. 39 *G.* 3. *c.* 37. 43 *G.* 3. *c.* 58 & *c.* 113. 47 *G.* 3. sess. 2. *c.* 66. 1 *G.* 4. *c.* 90.]

Jurisdiction.

THE court of Admiralty hath jurisdiction of all things done *super altum mare* out of any county (4 *Inst.* 134. Stat. 5 *El.* *c.* 5. § 30.) viz. on the main sea, or the coasts of the sea, out of any county, cinque port, haven, or pier. Stat. 27 *El.* *c.* 11. 4 *Inst.* 137.

Common law jurisdiction over offences committed at sea before stat. 28 H. 8. c. 15.

It appears that at common law, the K. B. had usually cognizance of felonies and treasons done on the narrow seas or coasts, though out of the bodies of counties: and that they were presented and tried by juries of the adjacent counties. 1 *Hale's P. C.* 154. 2. *id.* 12. The general commissions of oyer and terminer of felonies *infra comitatum* did not extend to such offences, 1 *Hale's P. C.* 154. 2 *id.* 15. and special commissions to hear and determine them on the coasts "*secundum legem et consuetudinem regni Angliæ,*" were often issued, naming the admiral and his lieutenant commissioners, *ibid.* In 35 *Ed.* 3. *A. D.* 1360—61., this common law jurisdiction was interrupted by a special order of the King and Council, and no exercise of it had occurred in Lord Hale's time since 38 *Ed.* 3. 2 *Hale's P. C.* 15. citing *claus.* 35 *Ed.* 3. M. 28. *dorso*. From that period to stat. 28 *H.* 8. *c.* 15., offences committed on the high seas or on the coasts out of the body or extent of any English county, were usually tried by the admiral or his deputy (now styled judge of the admiralty) according to the course of civil law, and without a jury. No conviction or sentence of death could therefore take place except on the evidence of two witnesses or the confession of the offender, 4 *Bla. Com.* 268. *Preamble* to 28 *H.* 8. *c.* 15.

Admiralty jurisdiction within a county considered.

It is perfectly agreed that the admiral never had jurisdiction in any creek, river, or port within the body of a county: *See preamble to Stat.* 15 *R.* 2. *c.* 3. *and authorities collected*, 1 *Stark. C. P.* 16. n. (*a*) till authorized by stat. 15 *Ric.* 2. *c.* 3. to inquire of

" deaths and mayhems done in great ships hovering in the main streams of great rivers below the bridges of the same rivers nigh to the sea."* This peculiar jurisdiction of the admiral is concurrent with that of the K. B. and of *general* commissions of oyer and terminer *infra comitatum*, 2 *Hale*, 16. 54., and does not exclude the common law, 1 *East's P. C.* 368.

In a late case at the admiralty session, of a murder committed in a part of Milford haven, never known to be dry except at the very lowest tide, and which was about three miles over, about seven or eight miles from the mouth of the river or open sea, and about 16 miles below any bridges over the river, a question was made whether the place where the murder was committed was to be considered as within the limits to which commissions granted under stat. 28 *H.* 8. *c.* 15. do by law extend. Upon reference to the judges they were unanimously of opinion that the trial was properly had, and it is said that during the discussion of the point, Lord Hale's construction of this act, in 2 *Hale, P. C.* 16, 17, 18. was much preferred to the doctrine of Lord Coke in 3 *Inst.* 111. 4 *Inst.* 134., and that most, if not all of the judges seemed to think that the common law has a concurrent jurisdiction with the admiralty in this haven and in all other havens, creeks, and rivers in this realm. *Bruce's Case*, 2 *Leach, C. C.* 1093.

28 H. 8. c. 15.

By stat. 28 *H.* 8. *c.* 15. *A. D.* 1536. treasons, felonies, robberies, murders, and confederacies committed in or *upon the sea*, or in any haven, river, creek or place *where the admiral* has or *pretends to have jurisdiction*, shall be tried according to the course of common law, and in such places and counties as shall be appointed by the king's commission, in like manner and form as if the same had been committed upon land.

Upon the sea.] This statute does not give the admiral jurisdiction in any river, creek or port within the body of a county; and the main question of jurisdiction arising on the statute is, Whether the fact happened at any place within the body of a county? If it did, the trial must be had before the ordinary jurisdiction: for the admiral can have no jurisdiction there, unless by positive statute. 1 *Russ.* 144. citing 4 *Inst.* 137. and see stat. 15 *R.* 2. *c.* 3.

High and low water mark.

Upon the open sea shore, the common law and admiralty have alternate jurisdiction over the space between high and low water mark, 3 *Inst.* 113. 2 *Hale's P. C.* 17.† so that if a man stricken on the high sea die on the shore on the reflux of the tide, the case is out of the admiral's jurisdiction, *Lacie's* case, 2 *Hale's P. C.* 17. 20. 1 *East's P. C. c.* 5. § 131.

Shooting from the land, and killing on the sea.

A. standing on the shore of a harbour, fired a loaded musket at a revenue cutter which had struck on a sand-bank in the sea about 100 yards from shore, by which firing a person was maliciously killed on board the vessel. This was held to be piracy, for the offence was committed where the death happened, and not at

* Or, " below the *points* or *reaches* of the same rivers, nearest to the sea." Pulton's Stat. 1618. Cay's Abridgt. cited Tomlins's Edit. of the Statutes at Large, 15 R. 2. c. 3. note (12). 4 *Inst.* 137. but all the other authorities read " bridges."

† For though the land be *infra corpus comitatûs* at the reflow, yet when the sea is full, the admiral hath jurisdiction *super aquam*, as long as the sea flows. 3 *Inst.* 113.; and see id. 54. and 2 *Hawk. c.* 9. § 14., as to the jurisdiction of the county coroner in offences on the sea shore, great rivers, &c.

the place from whence the cause of death proceeded. 1 *Russ.* 145, 146. citing 1 *Hawk. P. C. c.* 37. § 17. *Coombes's case,* 1 *Leach,* 388. 1 *East's P. C. c.* 5. § 131. See *Grosvenor* v. *St. Augustine's Lath.* Vol. II. p. 38.

Goods stolen on sea and brought on shore.

If it appears that the goods were taken at sea and afterwards brought on shore, the offender cannot be indicted as for a larceny in that county into which they were carried: because the original felony was not a taking of which the common law takes cognizance. 2 *East's P. C. c.* 17. *s.* 12. *p.* 805. 3 *Inst.* 113. 1 *Russ.* 145.

Criminal jurisdiction in harbours or below the bridges in great rivers.

It is sometimes difficult to fix the line of demarcation between the county and the high sea in harbours, or below the bridges in great rivers. The following general rules on the point are however collected by Sir *E. H. East,* 2 *P. C. c.* 17. *s.* 10. "It is plain that the admiral can have no jurisdiction in any rivers, or arms or creeks of the sea, within the bodies of counties, though within the flux and reflux of the tide; except in the particular instances of mayhem and homicide, done in great rivers, beneath the bridges near the sea, which depends on stat. 15 *Ric.* 2. *c.* 3. In general it is said, that such parts of the rivers, arms, or creeks are deemed to be within the bodies of counties, *where persons can see from one side to the other.* Lord *Hale,* in his treatise *De Jure Maris,* says, that the arm or branch of the sea which lies within the *fauces terræ,* where a man may *reasonably discern* between shore and shore, is, or at least may be, within the body of a county. *Hawkins,* however, considers the line more accurately confined by other authorities to such parts of the sea, where a man standing on the one side of the land *may see what is done on the other;* and the reason assigned by Lord Coke in the Admiralty case (13 *Rep.* 52.) in support of the county coroner's jurisdiction, where a man is killed in such places, *because that the county may well know it,* seems rather to support the more limited construction. But at least, where there is any doubt, the jurisdiction of the common law ought to be preferred."

Where the admiral pretends *to have power.*] These words are not to be extended to such a pretence as is without any right at all. 2 *Hale's P. C.* 17. 1 *Hawk. P. C. c.* 37. *s.* 11. 4 *Inst.* 137. 2 *East P. C. c.* 17. *s.* 10. Thus a felony committed between high and low water mark, after the water is reflowed, is not within the admiral's jurisdiction by these words, 2 *Hale's P. C.* 17.; but these words are to be understood between the high and low water marks; 3 *Inst. supra,* 113.; and in great rivers, where the sea flows and reflows below the first bridges, and also in creeks of the sea, at full water, where the sea flows and reflows, and upon high water upon the shore, though these are possibly within the body of the county: for there at least, by stat. 15 *R.* 2., they have a jurisdiction, and thus, accordingly, it has been constantly used in all times, even when common law judges have been named and sat in their commission; but the words *pretend to have* must not be extended to such a pretence as is without any right at all, as if the admiral pretend jurisdiction on the shore when the water is reflowed, yet he hath no cognizance of a felony committed there. 2 *Hale, P. C.* 17. *Lacie's case,* cited *ut supra.*

35 H. 8. c. 2.

This act, with respect to treasons done at sea, is not repealed by 35 *Hen.* 8. *c.* 2.

28 H. 8. c. 15. Accessary at

Upon this statute 28 *H.* 8. *c.* 15. a doubt arose, whether one who was accessary at land to a felony committed at sea, was triable by

the admiral within the purview of it; but, by the stat. 11 & 12 *W.* 3. *c.* 7., made perpetual by 6 *G.* 1. *c.* 19., accessaries to piracy may be enquired of, according to the stat. 28 *H.* 8. *c.* 15. Also, by the same statute, piracies and felonies upon the sea, &c. may be enquired of in any place at sea, or upon land in H. M.'s dominions, appointed by the king's commission. Also, by the stats. 4 *G.* 1. *c.* 11., 8 *G.* 1. *c.* 24., and 2 *G.* 2. *c.* 28., several piratical offences therein mentioned, and by stat. 18 *G.* 2. *c.* 30. certain acts of hostility committed at sea in time of war, may be enquired of and tried in the admiral's court; and see 2 & 3 *A.* *c.* 20. § 35. And by the stat. 43 *G.* 3. *c.* 113. § 5., all accessaries before the fact to felonies committed upon the high seas, whether the offence of becoming accessary shall have been committed within the body of a county of the realm or upon the high seas, may be tried in the manner prescribed by the stat. 28 *H.* 8. *c.* 15.

land to felony or piracy at sea. 11 & 12 W. c. 7. 6 G. 1. c. 19. 4 G. 1. c. 11. 8 G. 1. c. 24. 2 G. 2. c. 28. 18 G. 2. c. 30. 2 & 3 A. c. 20. 43 G. 3. c. 113. Accessary before the fact, to felonies committed at sea.

The stat. 39 *G.* 3. *c.* 37. enacts, that all offences committed on the high seas, out of the body of any county, shall be offences of the same nature, and liable to the same punishments as if they had been committed on shore, and shall be enquired of, heard, tried, and adjudged, as offences under stat. 28 *H.* 8. *c.* 15.

39 G. 3. c. 37. Jurisdiction over what offences.

All offences committed on the seas are tried before commissioners nominated by the Lord Chancellor, the indictment being first found by a grand jury of 12 men, and afterwards tried by another jury, as at common law; the course of proceedings being according to the law of the land. Among the commissioners are always the deputy of the admiral, or the judge of the admiralty, and two or more of the common law judges. See stat. 28 *H.* 8. *c.* 15. § 1, 2. 4 *Bla. C.* 269. 1 *Chit. Cr. L.* 152. The stat. 28 *H.* 8. merely altered the mode of trial in the Admiralty Court, and its jurisdiction continues to rest on the same foundation as before that act. It is regulated by the civil law, *et per consuetudines marinas* founded on the law of nations, which may possibly give to that court a jurisdiction which our common law has not. Per *Mansfield* C. J. *Rex* v. *Depardo*, 1 *Taunt. R.* 29.

28 H. 8. c. 15. Mode of trial, and judges.

Commissioners.

The stat. 32 *G.* 2. *c.* 25. § 20. for the more speedy bringing of offenders to justice, &c., enacts that a session of oyer and terminer and gaol delivery for the trial of offences committed on the high seas within the jurisdiction of the Admiralty of *England*, shall be holden twice at least in every year, *viz.* in *March* and *October*, at the Old Bailey, (except when the sessions of oyer and terminer and gaol delivery for *London* and *Middlesex* shall be there holden,) or in such other places in *England* as the Lord High Admiral, &c. shall in writing under his hand, directed to the judge of the Court of Admiralty, appoint.

32 G. 2. c. 25. Times for holding the court.

As to the jurisdiction of justices over offences committed on the high seas against the customs or excise laws, and their power of mitigating penalties, see stat. 47 *G.* 3. sess. 2. *c.* 66. § 43, 44. *infra* Vol. II. *tit.* Excise and Customs, *Jurisdiction of Justices*, § (*p*), *Mitigation of Penalties*, § (*s*).

47 G. 3. sess. 2. c. 66.

For the acts against wilful destruction of ships, see Ships.

Ships.

As to the forging the signature of the registrar of the Court of Admiralty, or High Court of Appeals for prizes, or his deputy, to certain instruments, see stat. 53 *G.* 3. *c.* 151. § 12. Forgery.

Forging hand of registrar.

By stat. 1 *G.* 4. *c.* 90. § 11. All and every the crimes and

1 G. 4. c. 90.

Offences under 43 G. 3. c. 58. committed upon the high seas, to be tried as felonies under 28 H. 8. c. 15.

offences mentioned in the act 43 *G.* 3. *c.* 58. *, which after the passing of this act shall be committed upon the high seas, out of the body of any county of this realm, shall be and they are hereby declared to be offences of the same nature respectively, and to be liable to the same punishments respectively, as if they had been committed upon the land in *England* or *Ireland*, and shall be inquired of, heard, tried, and determined and adjudged, in the same manner as treasons, felonies, murders, and confederacies are directed to be by stat. 28 *H.* 8. *c.* 15.

* See tits. Bastard; Black Act (*Lord Ellenborough's Act*).

Affray.

I. *What is an Affray.*
II. *How far it may be suppressed by a private Person.*
III. *How far by a Constable.*
IV. *How far by a Justice of the Peace.*
V. *Punishment of an Affray.*

I. What is an Affray.

What is an affray.

AN *affray is a public offence to the terror of the king's subjects; so called* (according to lord Coke) *because it affrighteth and maketh men afraid.* 3 *Inst.* 158.

From whence it seemeth clearly to follow, that there may be an *assault*, which will not amount to an *affray;* as where it happens in a private place out of the hearing or seeing of any, except the parties concerned; in which case it cannot be said to be to the terror of the people. 1 *Haw. c.* 63. § 1.

Words do not amount to an affray.

Also it is said, that no quarrelsome or threatening words whatsoever shall amount to an affray; and that no one can justify laying his hands on those who shall barely quarrel with angry words, without coming to blows; yet it seemeth, that the constable may, at the request of the party threatened, carry the person, who threatens to beat him, before a justice, in order to find sureties. 1 *Haw. c.* 63. § 2.

Challenge to fight.

Also, it is certain, that it is a very high offence to challenge another either by word or letter to fight a duel, or to be the messenger of such a challenge; or even barely to endeavour to provoke another to send a challenge, or to fight; as by dispersing letters to that purpose, full of reflections, and insinuating a desire to fight. 1 *Haw. c.* 63. § 3.

But although no bare words, in the judgment of law, carry in them so much terror as to amount to an affray, yet it seems certain, that in some cases there may be an affray, where there is no actual violence; as where a man arms himself with dangerous and unusual weapons, in such a manner as will naturally cause a terror to the people; which is said to have been always an offence at the common law, and is strictly prohibited by statute; for by

2 Ed. 3. c. 3.

stat. 2 *Ed.* 3. *c.* 3. it is enacted, "that no man of what condition soever, except the king's servants in his presence, and his ministers in executing their office, and such as be in their company assisting

them, and also upon a cry made for arms to keep the peace, shall come before the king's justices, or other of the king's ministers doing their office, with force and arms, nor bring any force in affray of peace, nor go nor ride armed, by night or day, in fairs or markets, or in the presence of the king's justices or other ministers, or elsewhere; upon pain to forfeit their armour to the king, and their bodies to prison at the king's pleasure. And the king's justices in their presence, sheriffs and other ministers in their bailiwicks, lords of franchises and their bailiffs in the same, and mayors and bailiffs of cities and boroughs within the same, and borough-holders, constables, and wardens of the peace within their wards, shall have power to execute this act. And the judges of assize may punish such officers as have not done their duty herein. 1 *Haw.* *c.* 63. § 4.

2 Ed. 3. c. 3.

Upon a cry made for arms to keep the peace.] It is holden upon these words of exception, that no person is within the intention of this statute, who arms himself to suppress dangerous rioters, rebels, or enemies, and endeavours to suppress or resist such disturbers of the peace and quiet of the realm. 1 *Haw.* *c.* 63. § 10.

In affray of peace.] *En affrayer de la pees*, L. *Coke* has it *pais*, of the country, or the people; and so, he observes, that the writ grounded upon this statute saith, In quorundam *de populo* terrorem; and therefore the printed book, *in affray of peace*, ought to be amended. 3 *Inst.* 158.

And it is holden upon these words, that no wearing of arms is within the meaning of this statute, unless it be accompanied with such circumstances as are apt to terrify the people; from whence it seems clearly to follow, that persons of quality are in no danger of offending against this statute by wearing common weapons, or having their usual number of attendants with them, for their ornament or defence, in such places, and upon such occasions, in which it is the common fashion to make use of them, without causing the least suspicion of an intention to commit any act of violence, or disturbance of the peace. 1 *Haw.* *c.* 63. § 9.

Nor to go nor ride armed.] It is holden that a man cannot excuse the wearing such armour in public, by alleging that such a one threatened him, and that he wears it for the safety of his person from his assault: but it hath been resolved, that no one shall incur the penalty of the said statute for assembling his neighbours and friends in his own house against those who threaten to do him any violence therein, because a man's house is as his castle. 1 *Haw.* *c.* 63. § 8.

Their bodies to prison.] Stat. 20 *R.* 2. *c.* 1. adds a fine likewise.

20 R. 2. c. 1.

Wardens of the peace.] It is holden that any justice of the peace, or other person who is empowered to execute this statute, may proceed thereon *ex officio*; and if he find any person in arms, contrary to the form of the statute, he may seize the arms, and commit the offender to prison; and that he ought also to make a record of the whole proceeding, and certify the same into the exchequer. 1 *Haw.* *c.* 63. § 5.

II. How far it may be suppressed by a private Person.

It seems agreed, that any one who sees others fighting, may lawfully part them, and also stay them till the heat be over, and

then deliver them to the constable, to be carried before a justice to find sureties for the peace. 1 *Haw.* c. 63. § 11.

And the law doth encourage him hereunto: for if he receive any harm by the affrayers, he shall have his remedy by law against them; and if the affrayers receive hurt by endeavouring only to part them, the standers-by may justify the same, and the affrayers have no remedy by law. 3 *Inst.* 158.

But if either of the parties be slain, or wounded, or so stricken that he falleth down for dead, in that case the standers-by ought to apprehend the party so slaying, wounding, or striking, or to endeavour the same by hue and cry; or else for his escape they shall be fined and imprisoned. 3 *Inst.* 158.

III. How far by a Constable.

Constable's power over affrays in his presence.

It seems agreed that a constable is not only empowered, as all private persons are, to part an affray which happens *in his presence*, but is also bound at his peril to use his best endeavours to this purpose; and not only to do his utmost himself, but also to demand the assistance of others, which if they refuse to give him, they are punishable by fine and imprisonment. 1 *Haw.* c. 63. § 13.

And it is said, that if a constable see persons either actually engaged in an affray, as by striking, or offering to strike, or drawing their weapons, or the like, or upon the very point of entering upon an affray, as where one shall threaten to kill, wound, or beat another, he may either carry the offender before a justice, to find sureties for the peace, or he may imprison him of his own authority for a reasonable time, till the heat shall be over, and also afterwards detain him till he find such surety by obligation: But it seems, that he has no power to imprison such an offender in any other manner or for any other purpose; for he cannot justify the committing an affrayer to gaol till he shall be punished for his offence: And it is said, that he ought not to lay hands on those, who barely contend with hot words, without any threats of personal hurt; and that all which he can do in such case, is to command them under pain of imprisonment to avoid fighting. 1 *Haw.* c. 63. § 14.

But he is so far entrusted with a power over all actual affrays, that though he himself is a sufferer by them, and therefore liable to be objected against, as likely to be partial in his own cause, yet he may suppress them; and therefore, if an assault be made upon him, he may not only defend himself, but also imprison the offender, in the same manner as if he were no way a party. 1 *Haw.* c. 63. § 15.

And if an affray be in a house, the constable may break open the doors to preserve the peace; and if affrayers fly to a house, and he follow with fresh suit, he may break open the doors to take them. 1 *Haw.* c. 63. § 16.

Not to others.

But it is said that a constable hath no power to arrest a man for an affray done out of his own view, without a warrant from a justice, unless a felony were done, or likely to be done; for it is the proper business of a constable to preserve the peace, and not to punish the breach of it. 1 *Haw.* c. 63. § 17. See tit. Constable, § IV.

IV. How far by a Justice of the Peace.

There is no doubt but that a justice of the peace may and must do all such things to the aforesaid purpose, which a private man or constable is either enabled or required by the law to do: But it is said that he cannot, without a warrant, authorise the arrest of any person for an affray out of his own view; yet it seems clear that in such case he may make his warrant to bring the offender before him, in order to compel him to find sureties for the peace. 1 *Haw. c.* 63. § 18.

And a justice has a greater power over one who has dangerously wounded another in an affray, than either a private person or a constable; for there does not seem to be any good authority that these have any power at all to take sureties of such an offender; but it seems certain, that a justice has a discretionary power either to commit him, or to bail him, till the year and day be past. But it is said that he ought to be very cautious how he takes bail if the wound be dangerous; for that if the party die, and the offender appear not, he is in danger of being severely fined, if he shall appear upon the whole circumstances of the case to have been too favourable. 1 *Haw. c.* 63. § 19.

V. Punishment of an Affray.

All affrays in general are punishable by fine and imprisonment. 1 *Haw. c.* 63. § 20.

And they are inquirable in the leet, as common nuisances. 3 *Inst.* 158.

Warrant to apprehend Affrayers.

Westmoreland. { To the constable of ———

WHEREAS A. I. *of* ——— *yeoman, hath this day made oath before me* J. P. *esquire, one of his majesty's justices of the peace for the said county, that on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— A. O. *of* ——— *yeoman, and* B. O. *of* ——— *yeoman, at* ——— *in the said county, in a tumultuous manner made an affray, wherein the person of the said* A. I. *was beaten and abused by them the said* A. O. *and* B. O. *without any lawful or sufficient provocation given to them, or to either of them, by him the said* A. I. *These are therefore to command you forthwith to apprehend the said* A. O. *and* B. O., *and bring them before me, or some other of his said majesty's justices of the peace for the said county, to answer the premises, and to find sureties as well for their personal appearance at the next general quarter sessions of the peace, to be holden for the said county, then and there to answer to an indictment to be preferred against them by the said* A. I. *for the said offence, as also for their keeping the peace in the mean-time towards his said majesty and all his liege people, and especially towards him the said* A. I. *Hereof fail not, as you will answer the contrary at your peril. Given under my hand and seal at* ——— *in the said county, the* ——— *day of* ——— *in the year* ———.

Indictment for an Affray.

THE jurors for our lord the king, upon their oath present, that A. O. *of* ——— *in the county of* ——— *tailor, and* B. O. *of* ——— *in the said county, blacksmith, with force and arms on the* ——— *day of* ——— *in the* ——— *year of the reign of our sovereign lord* George *the fourth, by the grace of God of the united kingdom of* Great Britain *and* Ireland, *king, defender of the faith and so forth, at* ——— *aforesaid in the county aforesaid, being arrayed and unlawfully assembled together in a warlike manner did make an affray, to the terror and disturbance of divers of the subjects of our said sovereign lord the king, then and there being and to the evil example of all other the subjects of our said sovereign lord the king, and against the peace of our said lord the king, his crown and dignity.*

Alehouses.

For matter relating to the *Excise* on Beer and Ale, see title **Excise.**

I. *Concerning Inns and Alehouses in general.*
[21 Jac. 1. c. 21.]

II. *Licensing Alehouses.*
[5 & 6 Ed. 6. c. 25.—2 G. 2. c. 28.—9 G. 2. c. 23.—26 G. 2. c. 13.—26 G. 2. c. 31.—24 G. 2. c. 40.—32 G. 3. c. 59. —35 G. 3. c. 113.—39 G. 3. c. 86.—48 G. 3. c. 143.—53 G. 3. c. 103.—56 G. 3. c. 113.—3 G. 4. c. 77.

III. *Penalties on selling Ale without a Licence.*
[4 J. c. 4.—26 G. 2 c. 31.—27 G. 2. c. 20.—35 G. 3. c. 113. —38 G. 3. c. 54.]

IV. *Recognizance and Forfeiture thereof.*
[5 & 6 Ed. 6. c. 25.—26 G. 2. c. 31.—57 G. 3. c. 19.—3 G. 4. c. 77.

V. *Offences in brewing Ale.*
[1 W. sess. 1. c. 24.—10 & 11 W. c. 21.—9 Ann. c. 12.—12 Ann. st. 1. c. 2.]

VI. *Concerning Ale Vessels and the Measure of Ale.*
[8 El. c. 9.—11 & 12 W. c. 15.—43 G. 3. c. 69.]

VII. *Enhancing the Price of Ale.*
[2 & 3 Ed. 6. c. 15.—2 G. 3. c. 14.]

VIII. *Innkeepers obliged to receive Guests:—harbouring Offenders against Revenue Laws.*
[9 G. 2. c. 35.]

IX. *Soldiers quartered in Alehouses.*

X. *Persons guilty of Tippling.*
[1 J. c. 9.—4 J. c. 5.—7 J. c. 10.—21 J. c. 7.—1 Car. c. 4.]

XI. *Concerning Drunkenness.*
[4 J. c.5.—7 J. c.10.—21 J. c.7.—22 G.2. c.33. Art. 2.]

XII. *Detaining Goods for the Reckoning.*
[11&12 W. c.15.]

XIII. *Goods of a Guest stolen out of an Inn.*

XIV. *Guests stealing Goods.*

XV. *Recovery and Application of Penalties.*

I. Concerning Inns and Alehouses in general.

EVERY inn is not an alehouse, nor every alehouse an inn; but if an inn uses common selling of ale, it is then also an alehouse; and if an alehouse lodges and entertains travellers, it is also an inn.

Difference between inns and alehouses.

It was resolved by all the judges, that any person might erect an inn to lodge travellers, without any licence or allowance. *Hutt.* 99. *Dalt. c.* 56.

Licences to erect inns.

But it seems to be agreed, that the keeper of an inn may by the common law be indicted and fined, as being guilty of a public nuisance, if he usually harbour thieves, or persons of scandalous reputation, or suffer frequent disorders in his house, or take exorbitant prices, or set up a new inn in a place, where there is no manner of need of one, to the hindrance of other ancient and well-governed inns, or keep it in a place in respect of its situation wholly unfit for such a purpose. 1 *Haw. c.* 78. § 1.

Inn indictable.

By stat. 21 *Jac.* 1. *c.* 21. § 2. (which repeals former statutes in this matter) hostlers and innholders are prohibited from making any horse-bread, but bakers shall make it, and the assize shall be kept, and the weight be reasonable, after the price of the corn or grain in the markets adjoining.

21 J. 1. c. 21. Innkeepers' charges. Horse-bread.

And they shall sell their horse-bread, and also their hay, oats, beans, pease, provender, and also all kind of victual both for man and beast, for reasonable gain, having respect to the prices for which they shall be sold in the markets adjoining, without taking any thing for litter.

Hay, oats, &c. to be sold for reasonable gain.

§ 3. Enables them to make horse-bread when no baker dwells in the same town.

By § 4. if the horse-bread which any of the said hostlers or innholders make be not of due assize, or if any of them shall offend in any thing contrary to this act, the justices, sheriffs, and stewards in their leets, may hear and determine, &c.; and for the first offence the hostler or innholder shall be fined; for the second offence, be imprisoned for one month; and for the third offence, shall stand upon the pillory (*a*); and for the fourth shall be forejudged for keeping any inn again.

Power of justices herein.

And if an inn use the trade of an alehouse, as almost all innkeepers do, it shall be within the statutes made about alehouses. *Dalt. c.* 56.

Innkeepers selling ale.

(*a*) By stat. 56 *Geo.* 3. *c.* 138. the punishment of the pillory is abolished, except in cases of perjury and subornation of perjury.

Inns to be licensed.

It hath been also agreed by law, that innkeepers ought to have licence, and be bound by recognizance for keeping good order, as alehouse-keepers are. *Dalt. c.* 7. 24. *Crom.* 77.

21 Jac. 1. c. 21. Power of justices by the commission.

By the commission of the peace, two justices (1 *Q.*) may inquire of innholders, and of all and singular other persons, who shall offend in the abuse of weights and measures, or in the sale of victuals, against the form of the ordinances in that behalf made.

II. Licensing Alehouses.

3 G. 4. c. 77.

By stat. 3 *G* 4. *c.* 77. intituled "*An act for amending the laws for regulating the manner of licensing alehouses in that part of the U. K. called* England, *and for the more effectually preventing disorders therein.*" § 1. After reciting that "whereas the several statutes now in force for regulating the manner of licensing persons to keep alehouses, or to sell ale, beer, and other liquors by retail therein, in that part of the U. K. called *England,* are found to be defective and insufficient, and it is expedient that the laws concerning such alehouses, inns, and victualling-houses, and the licensing thereof, should be amended, and some further provisions made as to the mode of granting such licences;" it is enacted, (after requiring persons to whom any licence shall be granted to enter into recognizances, in the form prescribed by the schedule to this act, marked A., for which see § xv. *post,*) "that every such licence or authority to be granted by justices of the peace or magistrates, after the passing of this act, shall be in the form prescribed by the schedule to this act, marked B., (for which see § xv. *post,*): provided always, that no police officer, patrole, constable, or headborough, shall be surety for any innkeeper, alehouse-keeper, or victualler, under this act."

Licence in what form.

No police officer, constable, &c. shall be surety.

Certificate of good conduct, &c. to be produced by persons applying for licences.

§ 2. And for the better preventing the granting of licences or authorities to unfit and improper persons, to keep alehouses or victualling houses, or to sell ale, beer, or other exciseable liquors by retail, and the occurrence of disorderly conduct in such houses; it is enacted, "that no licence or authority for such purposes shall be granted to any person not thereunto licensed or authorised the year preceding, unless such person shall produce, at the general annual meeting of the justices or magistrates to be held for that purpose, a certificate under the hands of the parson, vicar, or curate, or of the major part of the churchwardens, chapelwardens, and overseers of the poor, and of four reputable and substantial householders and inhabitants, or under the hands of eight respectable and substantial householders and inhabitants of the parish or place where the person applying for such licence or authority shall have last inhabited or dwelt for a space of six months; which certificate shall set forth the number of the house, and the name of the street, or other true description of the house, where such person so dwelt, and also whether he or she was there a housekeeper or an inmate, and whether such person, in such last-mentioned parish or place, kept an alehouse or victualling house, and if so, the sign of such house; and shall also set forth, that such person is of good fame, sober life and conversation, and a fit and proper person to be entrusted with a licence for the purposes aforesaid; and it shall be mentioned in every such licence or authority, to be granted to any person not licensed at the last general li-

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censing day, that such certificate was produced: and in case such certificate, in the form and signed in the manner aforesaid, shall not, on the occasions aforesaid, be produced, or the licence to be granted in such last-mentioned cases shall omit to state that such certificate was so produced, such licence or authority shall be null and void; and every such certificate so required to be produced on such occasions as aforesaid, shall be annexed to the recognizance to be entered into by the person receiving or obtaining such licence or authority as aforesaid, and shall with such recognizance be sent or returned to the clerk of the peace, or person acting as such as aforesaid: Provided always, that if any person shall forge or counterfeit any certificate, or write any name on any such certificate, to resemble, imitate, or represent the name of any parson, vicar, or curate, or any churchwarden, chapelwarden, overseer of the poor, or other person directed by this act to sign such certificate, with an intent to deceive the justices of the peace granting or having power to grant such licences or authorities, or shall tender or produce any paper with such counterfeit name or writing thereupon, knowing such name or writing to be counterfeit, with intent to deceive the said justices, or shall take or receive any sum or sums of money for signing or procuring signatures to any such certificate, every person so offending, being thereof lawfully convicted, shall be adjudged to be guilty of a misdemeanor, and shall suffer punishment accordingly."

3 G. 4. c. 77.

cence that certificate was produced.

Persons forging or receiving money for certificates to be guilty of a misdemeanor.

§ 5. Enacts "that from and after the passing of this act it shall and may be lawful to and for the clerks to the several justices of the peace, to be assembled at any general annual meeting for the purpose of granting licences or authorities to persons to keep alehouses, or to sell ale, beer, or other exciseable liquors by retail, in that part of the U. K. called *England*, and also at any special meeting for the like purposes, to be held pursuant to the directions of the said act of the 32nd year of the reign of his said late majesty, to ask, demand, and receive of and from every person to whom a licence or authority, for the purposes aforesaid, shall be granted, renewed, or continued, as and for the trouble of such clerks in filling up such licence or authority, and taking and returning the recognizance to be so entered into, the sum of 5*s*. and no more, over and above the fees directed to be paid to the several clerks of the peace, for filing such recognizances; and in case any clerk to such justices, or other person acting as such, shall demand, or take, or receive of or from any person to whom such license or authority as aforesaid shall hereafter be granted, or renewed, or continued, as and for his fee or reward for the trouble of preparing the same, and taking and returning such recognizance as aforesiad, any further or greater fee, or reward, or recompence than the said sum of 5*s*.; every person so offending shall, for every such offence, and on conviction on the oath of one credible witness, forfeit and pay the sum of 5*l*., to be sued for, recovered, levied, and applied in the same manner as any other pecuniary penalty imposed by this act may be sued for, recovered, levied, and applied."

Fees to be paid for licences.

Penalty on taking more than regular fees, 5l.

§ 7. Enacts "that from and after the passing of this act, all general annual meetings of the justices or magistrates, for the purpose of granting licences to sell, ale, beer, and other exciseable liquors by retail, as well in cities and towns corporate as in all

All general annual meetings to be in September.

3 G. 4. c. 77.

other places within that part of the U. K. called *England*, shall be held in the month of *September* in each and every year; any local custom or usage to the contrary thereof in any wise notwithstanding."

Allowance to be made for the time unexpired of licences on their renewal.

§ 8. "Provides that all persons who hold licences to sell ale, beer, and other liquors by retail, which would expire at a different period of the year from that at which they will expire after the passing of this act, shall be allowed in the payment of their duties, upon the first renewal of their licences under this act, for so much of their current year as shall not have then expired."

Licences not to be granted to any person whose house shall not have been previously licensed at a preceding general annual meeting of the justices; unless notices of application be given to the clerk to the justices, and affixed in the manner herein directed.

§ 17. Enacts, "That from and after the 10th day of *October* 1823, no licence or authority shall be granted to any person whatever in that part of the U. K. called *England*, by the justices of the peace, or persons acting as such, to retail ale, beer, or other exciseable liquors, in any house or place which shall not have been used for such purpose or purposes by virtue of a licence which shall have been granted at a preceding general annual meeting of the justices, unless the person intending to apply for such licence or authority shall give notice (Form *post*, § XV.) in writing to the clerk or clerks to the justices at such general meetings, three calendar months prior to the general annual meeting of the justices of the peace for granting licences for the place in which the house shall be situated, for which such licence shall be applied for, and shall affix or cause to be affixed three copies of such notice, written in a fair and legible hand, on the principal door or most conspicuous part of the house for which such licence is intended to be applied for, and on the door of the church of the parish in which such house shall be situated, on three several days within the months of *May* or *June*, between the hours of ten of the clock in the forenoon and of four of the clock in the afternoon, and between each of which days of affixing such notices the space of seven days shall elapse; which notice, and the copies thereof so to be affixed, shall be signed by the party interested in such house, and intending to make such application as aforesaid, or his, her, or their agent thereunto authorised; and every such notice shall state and set forth the situation of the said house in a true and particular manner, together with the rate of building thereof, where any such rate of building exists or is prescribed, and the name, place of abode, and description of the party so applying, and also the name and place of abode of the person proposed to be licensed therein; and every licence to be granted to sell ale, beer, or other liquors by retail in such new house or other place, not having been used for any of the purposes aforesaid by virtue of a licence granted the preceding year, without such previous notice having been given as aforesaid, shall be void to all intents and purposes."

[Ju]stices not to [ac]t as such [wh]ere personally interested.

§ 18. "And whereas it is expedient that persons empowered to grant licences by virtue of this act should not be swayed by interest in the execution of such powers; be it therefore enacted, That no justice of the peace or magistrate in any county, riding, city, liberty, town corporate, or place, in that part of the U. K. called *England*, who is a brewer, maltster, distiller, or dealer in or retailer of ale, beer, or other exciseable liquors, or is concerned in partnership with any person as a brewer, maltster, distiller, or dealer in or retailer of ale, beer, or other exciseable liquors, or shall be the manager or agent of or for any house licensed or about

to be licensed for any of the purposes aforesaid, at any of the time or times when any of the powers of this act are to be executed, shall act in any of the meetings for granting of any licence or licences, authority or authorities, or shall convict or join in any conviction, or in the determination of any application for a licence or authority to a person to keep any house not before licensed, or in the determination of any appeal directed by this act; and every justice of the peace or magistrate who shall knowingly or wilfully offend in any of the premises, shall for every such offence forfeit and pay the sum of 100*l.*, to be recovered by any person who will sue for the same, within six calendar months after such offence committed, by action of debt or on the case, or by bill, suit, or information in any of his majesty's courts of record, wherein no essoign, protection, or wager at law, nor more than one imparlance shall be allowed; which said penalty of 100*l.* shall be paid, one moiety thereof to the person who sues for the same, and the other moiety to H. M., his heirs and successors."

3 G. 4. c. 77.

Penalty of 100*l.* on justices so offending.

§ 19. Enacts, "that from and after the 10th day of *October*, 1823, all and every person and persons using and exercising, or that hereafter shall use and exercise the trade or business of a licensed victualler or alehouse keeper, or who shall sell ale, beer, or other exciseable liquors by retail, by virtue of any licence or authority, licences or authorities, already granted or hereafter to be granted by the justices of the peace in that part of the U. K. called *England*, for so long as he or they shall use and exercise the said trade or business, or shall hold such licence or licences, authority or authorities, and no longer, shall at all times hereafter be disqualified from serving the office of constable, headborough, police officer, or patrole: and if at any time hereafter any such person or persons using the said trade or business, or holding and using such licence or licences, authority or authorities, shall be chosen or elected into the office of constable or headborough, that then such person or persons producing such licence or authority, or licences or authorities, to use and exercise the said trade of a licensed victualler or alehouse-keeper, or to sell ale, beer, or other exciseable liquors by retail, duly issued pursuant to the provisions of this act, or of any other act, law, or charter now in force, to the person or persons by whom he shall be so elected or appointed, or by or before whom he shall be summoned, returned, or required to serve or hold the said office of constable, shall be absolutely discharged from the same; and such nomination, election, return, or appointment shall be utterly void and of none effect, any order, custom, law, or statute to the contrary in anywise notwithstanding; nor shall any such person using or exercising the said trade or business of a licensed victualler, or to whom any such licence or authority shall be granted for the purposes aforesaid, while he shall so exercise the said trade, or hold and use such licence or authority, take upon himself, or serve, or execute the office of deputy to any constable already chosen, or hereafter to be chosen and elected to that office within that part of the U. K. called *England*, on pain of forfeiting, for every act to be done, committed, or executed by him as or in the character of deputy to any such constable as aforesaid, the sum of 10*l.*, to be recovered in manner herein-before directed by virtue of this act."

Constables, &c. disqualified from holding licensed houses.

No licensed person liable to serve as constable.

Penalty of 10*l.* for serving as constable or deputy constable.

3 G. 4. c. 77.

Act not to extend to the city of London.
Other acts not repealed.

§ 23. " Nothing herein contained shall extend or be construed to extend to alter the time or times of granting licences for keeping common inns or alehouses in the city of *London*."

§ 24. " Nothing in this act contained is intended to repeal any former act or acts of parliament made in this behalf; except only so far as the same or any of the provisoes and enactments thereof have been expressly repealed, altered, or amended by the present act."

Universities not affected.

§ 25. " Nothing in this act contained shall extend to alter or in any manner to affect any of the rights or privileges of the universities of *Oxford* or *Cambridge*, or the powers of the chancellors or vice chancellors of the same, as by law possessed under the respective charters of the said universities."

Duration of act limited to three years.

§ 26. " This act shall commence and take place from the passing thereof, and from thence shall continue and be in force for and during the term of three years, and from thence to the end of the then next session of parliament."

5 & 6 Ed. 6. c 25. 2 G. 2. c. 28. 26 G. 2. c. 31. Licence granted by two justices at a general meeting.

By stat. 5 & 6 *Ed.* 6. *c.* 25., *any* two justices (1 *Q.*) might license alehouses. *But now* by stat. 2 *G.* 2. *c.* 28. § 11. and 26 *G.* 2. *c.* 31. § 4., reciting that, " whereas many inconveniences have arisen from persons being licensed to keep inns and common alehouses, by justices of the peace, who living remote from the places of abode of such persons, may not be truly informed as to the occasion or want of such inns or common alehouses, or the characters of the persons applying for licences to keep the same; it is enacted, that after the 24th *June*, 1729, *no licence* shall be *granted* to any person *to keep a common inn or alehouse*, or to retail any brandy, or strong water, *but at a general meeting of the justices of the peace*, acting in the division where the said person dwells, to be holden for that purpose, on the first day of *September* yearly, or within twenty days after." Vide 48 *G.* 3. *c.* 143. § 7. post.

2 G. 2. c. 28. 26 G. 2. c. 31. Cities and towns corporate.

Stats. 2 *G.* 2. *c.* 28. § 12., and 26 *G.* 2. *c.* 31. § 16., provide that nothing in those acts shall extend to alter the method, or power, (or time, 26 *G.* 2. *c.* 31. § 16.) of granting licences in any city or town corporate. (See 3 *T. R.* 562, 563.)

It has been adjudged, that this exception does not exempt such places from the operation of the other parts of the act; but magistrates in such districts must grant licences at a public meeting, and give the like notice of their meeting to grant licences as justices for a county give. *Rex* v. *Downs et al.* 3 *T. R.* 560.

Houses which take in lodgers *only*, need not be licensed.

To keep a common inn or alehouse.] It has been determined, that houses at *Epsom*, where they take in lodgers and boarders, coming to drink the waters there during the season, and dress victuals, and sell them ale and beer, and entertain their horses at 8*d.* a day, but sell to no other persons, are not inns nor alehouses within the meaning of these acts. *Parker* v. *Flint*, 12 *Mod.* 254.

A sign is not essential to an inn, but it is an evidence of it. Per *Holt* C. J., S.C.

26 G. 2. c. 31. The meeting, how to be appointed.

At a general meeting of the justices holden for the division.] By stat. 26 *G.* 2. *c.* 31. § 4. " The day and place for granting such licences shall be appointed by two or more justices for the division, by warrant (A) under their hands and seals, at least ten days before such meeting, directed to the high constable or high constables of the division, requiring him or them to order (B) his or their petty constables or other peace officers, to give notice to

the several innkeepers and alehouse-keepers within their respective constablewicks, of the day and place of such meeting; and all licences hereafter granted at any other time or place shall be null and void to all intents and purposes whatsoever."

26 G.2. c.31.

Licences granted at other time, void.

" Any justice of the county, going to the meeting in the division, is for this purpose a justice of the division." Per *Aston* J. *Rex* v. *Price*. *Cald.* 305.

What justices are 'of the division.'

§ 2. " And for the better preventing disorders in alehouses," no licence shall be granted to any person not licensed the year preceding, (except in cities or towns corporate, § 16.) unless such person produce, at the general meeting of the justices in September, a certificate (C) under the hands of the parson, vicar, or curate, and the major part of the churchwardens and overseers, or else of three or four reputable and substantial householders and inhabitants of the parish or place where such alehouse is to be, setting forth that such person is of good fame, and of sober life and conversation; and it shall be mentioned in such licence, that such certificate was produced, otherwise such licence shall be null and void.

Certificate of persons to be licensed.

Unless he produce a certificate under the hands of the minister and major part of the churchwardens and overseers, or else of three or four reputable and substantial householders of the place.] The certificate being signed by three or four reputable and substantial householders, &c. without the parson, vicar, or curate, and churchwardens, is sufficient. Per *Cur. Rex* v. *Young* & *Pitts*. 1 *Burr.* 556.: see now stat. 3 *G.* 4. *c.* 77. § 2. ante p. 40.

By stat. 5 *G.* 4. *c.* 13. § 52. (*The Mutiny Act.*) Any two justices of the peace, or any two magistrates within their respective jurisdictions, may grant or transfer any licence for selling ale by retail, or cider or perry, to be drank or consumed in any house or houses, or premises, where more houses or premises than one shall be held together by the same person or persons as a canteen, or any licence to sell spirituous liquors, or strong waters, or wine or liquor by retail, to any person or persons applying for the same, who shall hold any canteen under any lease thereof, or any agreement or other authority from any two of the principal officers of the board of ordnance, or from any two of the late commissioners for the affairs of barracks, or from the comptroller or other proper officer of the barrack department, without regard to the time of year, or any notices or certificates specified or required in relation to the applying for or granting any such licences, any thing in any act or acts of parliament to the contrary notwithstanding: and his majesty's commissioners of excise in *England*, *Ireland*, and *Scotland* respectively, or any person appointed or employed by the said commissioners in *England* or *Ireland* respectively in that behalf, or any collectors or supervisors of excise within their respective districts, may and shall grant licences for selling beer or ale by retail, or cider or perry, to be drank or consumed in the houses or premises occupied as a canteen, of the person or persons applying for such licence, or any licence to sell spirituous liquors or strong waters, or wine, or liquors by retail, to any such person or persons who shall hold any such canteen under any such licence, or transfer of any such licence, of any justice or magistrate as aforesaid; and any person or persons holding any such canteen under any such lease, agreement, or authority as

Licences may be granted for keeping canteens.

5 G.4. c.13.

aforesaid, and having such licences as aforesaid, may keep such canteen, and utter and sell therein, and in the premises thereto belonging, and not elsewhere, victuals, and all such exciseable liquors as he and they shall be licensed and empowered to sell under the authority and permission of any such excise licence as aforesaid, without being subject to any penalty or forfeiture.

A mandamus to compel the justices to grant a licence will not be granted.

Nevertheless, although a certificate in cities and towns corporate is not requisite by 2 *Geo.* 2. *c.* 28., yet it is discretionary in the justices whom they will license, and a *mandamus* will not lie to compel the justices to license any person; and on a conviction for selling ale without licence, the want of such licence can only come in question, and not the reason why it was denied. *Giles's Case*, 2 *Str.* 881.

Therefore, even where affidavits were offered to be produced, of the justices declaring that they would grant no licences to any of the inhabitants who signed a petition to the parliament for erecting a workhouse there; and that the person, on whose behalf the motion was made, had been a victualler in the town for above thirty-five years; the motion was refused. 1 *Barnard.* 402.

Information for *refusing* to grant a licence.

Rex v. *Young and Pitts*, 1 *Burr.* 556. A motion was made for an information against the defendants, for arbitrarily, obstinately, and unreasonably, refusing to grant a licence to one *Henry Day* to keep an inn at *Eversley, Wilts.*—L. *Mansfield* Ch. J. declared "that this court has no power or claim to review the reasons of justices of the peace, upon which they form their judgments in granting licences; by way of appeal from their judgments, or over-ruling the discretion intrusted to them.—

If the justices have acted partially.

But if it clearly appears that the justices have been partially, maliciously, or corruptly influenced in the exercise of this discretion, and have (consequently) abused the trust reposed in them, they are liable to prosecution by indictment or information, or even possibly by action, if the malice be very gross and injurious.—If their JUDGMENT be wrong, yet their HEART and INTENTION pure, God forbid that they should be punished."

Justice not to be punished for error in judgment.

And he declared that he should always lean towards favouring them; unless partiality, corruption, or malice, clearly appeared. And having gone through all the particulars, both of the charge and of the defence, he concluded with declaring it as his opinion that there was not sufficient ground for a criminal charge against these justices. *Denison* J. said, "It must be *clear* and *apparent* partiality, or wilful misbehaviour, to induce the court to grant an information: not a mere error in *judgement.*" And, by the court unanimously, the rule was discharged with costs.

Justices can annex no condition to the granting of a licence.

Rex v. *Athay*, 2 *Burr.* 653. On shewing cause why a rule should not be made absolute, for an information against a justice for a misdemeanor in refusing to grant a licence to one *Francis Simes* (who had been licensed for several preceding years) to sell ale, as usual, it appeared that one of the grounds upon which this rule had been obtained was, that the only reason why the licence was refused him was his declining to pay a sum of money (viz. 5*l.*) which was claimed of him upon a distinct and collateral account, and which he denied to be due from him; the payment of which sum of money was (as he alleged) insisted upon by the justice, as a condition precedent to his granting the man a licence. The court were unanimous, that the allegation appeared to be

false in fact; but, at the same time, they declared explicitly that the justices have no sort of authority to annex any such conditions to the grant of these licences.

Rex v. *Williams and Davis*, 3 *Burr.* 1317. An information was granted against the defendants, justices of the peace for the borough of *Penryn*, for refusing to grant licences to those alehouse-keepers who *voted against their recommendation of* candidates for *members of parliament* for that borough. It appeared that they had acted very grossly in this matter; having previously threatened to ruin these people, by not granting them licences, in case they should vote against those candidates whose interest these justices themselves espoused; and having afterwards actually refused them licences upon this account only. And Ld. *Mansfield* declared that the court granted this information against the justices, *not* for the mere refusal to grant the licences, (which they had a discretion to grant or refuse, as they should see to be right and proper,) but for the *corrupt motive* of such refusal, for their *oppressive* and *unjust* refusing to grant them, because the persons applying for them would not give their votes for members of parliament as the justices would have had them.

Rex v. *Hann and Price, Justices of the Peace for the borough of Corfe Castle*, 3 *Burr.* 1716. On shewing cause against an information which had been prayed for against the defendants, for a misdemeanor in the execution of their office, in refusing to grant a licence to sell ale to one *Ingram*, an innkeeper in that borough, *merely from a motive of resentment* against him, for having espoused an opposite interest in the election for members of that borough; the defence was, that they did not act from any resentment or corrupt motive, but solely because *Ingram* was an improper person, and had kept a disorderly house, and continued to keep it after full notice to the contrary, and in particular that he encouraged gaming and cockfighting at his house. — L. *Mansfield* Ch. J. said, "The court should never interpose against magistrates, unless they have acted from bad motives and *malâ fide*; especially in such a case as this, where they are intrusted with an *absolute discretion*: but for that very reason, this is the strongest case for the interposition of the court, *if* it appear that they *have* acted upon corrupt motives. If it did appear clearly that this man kept a disorderly house, it would be a reason against the court's interposing against the justices. But this does *not* clearly appear." — And he declared it to be of very dangerous consequence to permit the due discretion of the justices to be influenced by considerations of this kind. — The court made the rule absolute.

Defendants must appear personally to receive judgment upon an information, where the punishment may be *corporal.*

Afterwards, the justices confessing themselves guilty of the information, it was moved for a rule to dispense with their personal appearance, on the undertaking of their clerk in court to answer for their fines. But the court upon full debate were unanimous in refusing the motion. The general doctrine laid down by the court was, that though such a motion was subject to the discretion of the court, either to grant or refuse it, where it was clear and certain that the punishment would not be corporal; yet it ought to be denied in every case where it was either *probable* or *possible* that the *punishment would* be *corporal*. And this, for the sake of example and prevention; as the notoriety

of their being called up might deter others from the like offences. And finally, upon their appearance in court, the sentence was, that they should be committed for a month, fined 50*l.* each, and further imprisoned till the fine be paid. 3 *Burr.* 1786.

A criminal information against magistrates may be moved for in the *second* term after the offence, there having been no intervening assizes.

A motion was made for leave to file an information against two justices of the peace for the county of *Salop*, upon a charge of having improperly refused an ale-license. But after stating that the refusal was in *September* last, the counsel duubted whether this application were made in time, this being the *second* term after the fact complained of; and afterwards Lord *Ellenborough* C. J. stated, that upon an accurate review and consideration of the precedents and practice, the counsel was now in time to move for the information within the second term, no assizes having intervened. *Rex* v. *Herries, Esq. and Peters, Clerk,* 13 *East,* 270. *Rex* v. *St. Aubyn and others,* cited as in point. 13 *East,* 271. *note* (*a*).*

An information will be granted for improperly *granting* an ale-licence.

Rex v. *Holland and Forster,* 1 *T. R.* 692. An information had been moved for against the defendants, justices for *Middlesex,* for improperly granting an ale-licence to one *Harrison,* who had been refused one by the justices at their last general meeting, on account of misbehaviour. It appeared that the defendant *Forster* had been present at that general meeting at the time when the licence was refused; but he afterwards told the other defendant *Holland,* who was not present at the general meeting, that the only reason why a licence had not been granted then was, that they might have an opportunity of inquiring into the character of *Harrison,* and had accordingly prevailed upon *Holland,* at a private meeting held by those two only, to join in granting a licence. The court were clearly of opinion, that an information should be granted against a justice, as well for *granting* a licence improperly, as for *refusing* one in the same manner: that it had already been done in the case of *Rex* v. *Filewood;* and indeed the mischief of granting a licence improperly was infinitely greater than that of refusing one; for in the former case it might be productive of injury to the whole community, while in the latter the grievance was felt only by the individual. That the only ground of these applications was the improper conduct of the magistrates. But as it appeared in this case that *Holland,* though not altogether blameless, had been deceived by *Forster,* they discharged the rule as to the former, upon his paying the costs of the application as against himself; and as to *Forster,* they granted the information.

Rex v. *Bingham, Clerk, M.* 54 *G.* 3. *MS.* The defendant was convicted at *Winchester Sum. Ass.* 1813, of a conspiracy to de-

* N.B. The motion in this case was not renewed, but at *Shrewsbury Lent Assizes,* 1812, the same defendants were tried upon an indictment, charging them with having corruptly and without any lawful cause whatever, and from motives of private malice, refused to grant the prosecutor a licence to keep a public house. There was not one tittle of evidence to support the charge, and the defendants were acquitted. Mr. Serjeant *Marshal* (who went the *Oxford* circuit for Mr. Justice *Lawrence*) in his address to the jury observed, that magistrates were not obliged to give any reason for withholding a licence, and that the discretion which the law had so properly placed in their hands was not to be questioned, unless it clearly appeared that they acted from corrupt and unjust motives. The law would protect magistrates even in case of error, where no corrupt motive could be proved. MS.

fraud the revenue of certain stamp duties. It appeared in evidence at the trial that he was a justice of the peace, and one of those who attended on the general licensing day, when he obtained, through an improper influence, a licence in order to enhance the value of some premises which were his own property. In pronouncing judgment, K. B., *Nov.* 26. 1813, *Le Blanc* J. said, "The court does not go out of its way to cast reflections upon the conduct of those who are not before the court; but it would not discharge its duty if it did not declare, that it is not a proper exercise of the functions of any magistrates so to grant a licence, when they know that no house exists to which that licence is to be applied. The legislature has taken particular care that no person concerned in public-houses or victualling-houses, under the description of brewers or dealers in spirits, shall, themselves, take part in the granting of licences, in order to guard against any improper influence in the granting of them, and it is subject to the same mischief and the same inconvenience that any person in the situation of a magistrate, being the owner of a house, which afterwards may be converted into a public-house, should know and should consent to a license being kept on foot, which may ultimately tend to increase the value of his property, whenever that house may be conveyed to a person to whom the licence may attach."—The defendant was sentenced to be imprisoned in *Winchester* gaol for six calendar months, and Lord *Ellenborough* C. J. directed the proceedings to be laid before the lord chancellor.—*See the printed report of the trial, &c. by Gurney*, 1814.

R. v. *Bingham.*

Rex v. *Sainsbury*, *M. T.* 32 *G.* 3., 4 *T. R.* 451. If there be two sets of magistrates, as for a county and a borough, and having a co-ordinate jurisdiction in that borough, and one of the two sets appoint a meeting for granting alehouse-licences, and when the day arrives, refuse a licence to an applicant for one; and then the other set of magistrates, having subsequently to the prior appointment, but before the first licensing day, appointed a future day for the same purpose, licence on that day the person to whom on the former day a licence had been refused, it is an indictable offence.

Per *Ashhurst* J., S. C. The jurisdiction of holding the meeting directed by the 26 *G.* 2. attached in those magistrates, who first gave notice of the meeting; and it was a breach of the law in the other magistrates to attempt to wrest this jurisdiction out of their hands; for what the law says shall not be done, it becomes illegal to do, and is therefore the subject-matter of an indictment, without the addition of any corrupt motives. And though the want of corruption may be an answer to an application for an information, which is made to the extraordinary jurisdiction of the court, yet it is no answer to an indictment, where the judges are bound by the strict rule of law.

Rex v. *Marshall and Grantham*, 13 *East*, 322. A motion was made for a criminal information against the defendants, justices of the peace for the parts of *Lindsey* in the county of *Lincoln*, for having, on the 24th of *October* last, improperly, as it was suggested, granted an ale-licence. The prosecutor had given the magistrates notice of the intended application to this court on the 26th of January, but the court now refused to entertain it, because it was made so late in the second term, that the magistrates would

The court refused to grant a rule nisi for a criminal information against two magistrates so late in the second term

after the grievance, as to prevent them from shewing cause against such rule in the same term.

have no opportunity of shewing cause in the present term against a rule *nisi*, for an information, if granted. And *Le Blanc* J. read a note of a case of *Rex* v. *Thomas*, *H.* 41 *G.* 3. which was a similar application against a justice of the peace; and because the offence was stated to have been committed in *October*, and the motion was not made till so late in *Hilary* term that there was not time for the magistrate to shew cause in that term against it, the court refused to grant the rule.

26 G. 2. c. 13. Justices being brewers, distillers, &c. prohibited from granting licences.

By stat. 26 *G.* 2. *c.* 13. § 12. No justice of the peace, being a common brewer of ale or beer, innkeeper or distiller, or a seller of and dealer in ale or spirituous liquors, or interested in any of the said trades, or being a victualler or maltster, shall be capable or have any power to grant licences for selling ale, beer, or any other liquors by retail, but the same shall be null and void.

39 G. 3. c. 86. In cities and towns corporate, if not sufficient justices, county justices may act.

But by stat. 39 *G.* 3. *c.* 86. § 3. In case it shall happen in any city, town, or place, that any of the corporate justices or magistrates shall not be capable of acting in granting licences, by reason of being sellers of or dealers in foreign spirits, it shall be lawful for any justice acting for the county at large, within which such city, town, or place is situate, or next adjoining thereto, at the request in writing of the chief magistrate of such city, town, or place, to act within the same for the purpose of granting licences to sell ale, &c. by retail therein, instead of the justices disqualified as aforesaid.

Justice's clerk's fee.

By stat. 9 *G.* 2. *c.* 23. § 14., 24 *G.* 2. *c.* 40. § 24. The justice's clerk shall have 2*s.* 6*d.* and no more, for each such licence.

Licence restrained to the place.

By stat. 26 *G.* 3. *c.* 31. § 3. No licence (as in that act mentioned) shall entitle any person to keep an alehouse in any other place than that in which it was first kept by virtue of such license; and such licence, with regard to all other places, shall be void.

How long to continue.

§ 4. And all licences granted (*by the justices*) at the general licensing day, shall be made for one year only, to commence on the 29th day of *September*. (See 48 *G.* 3. *c.* 143. § 3, 4. *post.*)

By stats. 32 *G.* 3. *c.* 59. and 48 *G.* 3. *c.* 143. Certain provisions are enacted respecting the renewal of licences granted at the general licensing day, to the executors, or to the successor, of any person dying or removing from a licensed house; but such provisions appear to be superseded, (if not repealed,) and others substituted in lieu thereof, 3 *G.* 4. *c.* 77. *s.* 6. *infra*, p. 54.

32 G. 3. c. 59. Not to extend to houses not licensed the year preceding, nor to alter the time of granting licences, &c.

By stat. 32 *G.* 3. *c.* 59. § 4. & 5. It is enacted, that nothing in that act shall extend to empower any justice of the peace at any petty sessions to grant any new licence to any house, the occupier whereof was not duly licensed at the general licensing day next before such petty sessions; nor to alter the time of granting licences; nor to oblige persons not licensed the year preceding to produce certificates in the city of *London*.

Middlesex and Surry.

And by the same statute, § 2. (*a*) In the counties of *Middlesex* and *Surry*, the justices at the general licensing meetings shall appoint, not less than six, nor more than eight special days of meeting yearly at different equal periods, as near as may be next ensuing such general meeting, and shall cause due notice to be given of the times and places of such special meetings; at which

(*a*) Quere, If not virtually repealed by stat. 48 Geo. 3. c. 143?

meetings two justices of the division may grant to the executors, administrators, or assigns, of such licensed persons, or the person coming into any house which hath become empty or unoccupied as aforesaid, a licence to such new tenant or occupier (on his producing a certificate, and entering into a recognizance as aforesaid): or in their discretion they may allow a continuance of any licence before granted in manner aforesaid until the next general licensing day.

32 G. 3. c. 59.

By stat. 48 *G.* 3. *c.* 143. The stamp-duties imposed by 44 *G.* 3. *c.* 98., upon licences granted by magistrates to sell ale, beer, or other exciseable liquors by retail, were repealed, and a new excise duty of 2*l.* 2*s.* imposed: this duty was repealed by stat. 56 *G.* 3. *c.* 113. § 1., from 5th *July* 1816, and altered, § 2., to 2*l.* 2*s.*, where the dwelling-house was rated to the house-tax, at a rent of 15*l.* *per annum*; if rated as aforesaid at 15*l.* *per annum* or upwards, and under 20*l.*, 3*l.* 3*s.*; if at 20*l.* *per annum* or upwards, 4*l.* 4*s.*: which duties, § 4., are to be under the management of the commissioners of excise, and are to be raised, levied, paid, &c. by the same means and in the same ways by which former duties of excise of the same kind were or might be raised, levied, paid, &c.: and subject, § 12., to all former conditions, rules, fines, penalties, forfeitures, &c. for securing the revenue of excise; except where expressly altered by this act.

48 G. 3. c. 143. Stamp duties on licences repealed. 56 G. 3. c. 113.

By stat. 5 *G.* 4. *c.* 54. § 1. From *October* 10th, 1824, all duties on excise licences taken out by sellers of beer, ale, cyder, or perry, by retail, to be drank or consumed in his, her, or their house or premises, are repealed; except as to arrears unpaid on 10th *October*, 1824, or fines or penalties relating to such duties incurred before that day, and then remaining unpaid.

5 G. 4. c. 54. Duties on licences for retailing beer, &c. repealed.

§ 2. Enacts, that from 10th *October*, 1824, every person in *G. B.*, who shall be duly authorised by justices of the peace or magistrates, to keep a common inn, alehouse, or victualling-house, and who shall sell beer, cyder, or perry by retail, to be drank or consumed in his, her, or their house or premises, shall annually take out an excise licence to sell beer, cyder, or perry as aforesaid, and shall for every such licence, if the dwelling-house in which such person shall reside, or retail such beer, cyder, or perry, at the time of taking out such licence, shall not, together with the offices, courts, yards, and gardens therewith occupied, be rated under the authority of any act or acts of parliament for granting duties on inhabited houses, at a rent of 20*l.* *per annum* or upwards, pay the sum of 1*l.* 1*s.*; and if rated as aforesaid, at 20*l.* *per annum* or upwards, 3*l.* 3*s.* [As to brewers retailing beer not to be consumed on the premises where sold, see Vol. II. Excise, § V. 1.

Licences for persons authorised by justices to keep houses for retailing beer, &c.

By stat. 48 *G.* 3. c. 143. § 2. "All and every person or persons, who shall sell beer or ale by retail, or who shall sell cyder or perry, to be drank or consumed in his, her, or their house or premises, shall, before he, she, or they shall sell any beer or ale by retail, or any cyder or perry, to be drank or consumed in his, her, or their house or premises, take out an excise licence, authorising such person or persons to sell beer or ale by retail, and also cyder and perry, to be drank or consumed in his, her, or their house or premises; which license shall be granted in manner hereinafter mentioned: (that is to say) If any such licence shall be taken out

48 G. 3. c. 143. Licences to be granted by commissioners of excise in London, and by collectors in the country.

48 G.3. c.143.

within the limits of the chief office of excise in *London*, the same shall be granted under the hands and seals of two or more of the commissioners of excise in *England* for the time being, or of such persons as they the said commissioners of excise or the major part of them for the time being shall from time to time appoint or employ for that purpose; and if any such licence shall be taken out in any part of *England*, not within the said limits, the same shall be granted under the respective hands and seals of the several collectors and supervisors of excise, within their respective collections and districts." And the said commissioners of excise, &c. and also all such collectors and supervisors, are respectively authorised and required to grant such licences to the persons who shall apply for the same, on the person or persons so applying, first paying for such licence a duty of 2*l*. 2*s*.

Licences taken out in the country to be granted by collectors of excise.

5 G. 4. c. 54. Expiration of licences.

By stat. 5 *G*. 4. *c*. 54. § 13. All licences, the duties on which are hereby repealed, shall expire on the 10th day of *October* in each year.

Spirit licences.

§ 14. As to duration of spirit licences, when common inns, &c. are licensed at other times than *September*, see Excise, § V. 15. (*e*)

Persons disabled by conviction from keeping a common inn, &c. may not take out excise licence to sell beer by retail. Penalty 50*l*. Evidence of former conviction.

§ 15. Every person who shall, by any conviction, be disabled from holding or having a licence to keep, or from keeping a common inn, alehouse, or victualling-house, shall also by such conviction be disabled from taking out any excise licence to sell, and from selling beer by retail, in any manner soever; and if any such person shall, after such conviction as aforesaid, take out or have any excise licence to retail beer, the same shall be void: and if any person shall, after such conviction, sell beer by retail, the offender shall, for every offence, forfeit 50*l*.; and in all cases of prosecution against any such person for any penalty imposed by this act, a certificate from the clerk of the peace, or person acting as such, of any such conviction as aforesaid, shall, on the trial in such prosecution, be legal evidence thereof; which certificate such clerk of the peace, &c. is hereby required to grant on demand, without fee or reward.

48 G.3. c. 143. Time of taking out licences in cases of charters, &c.

By stat. 48 *G*.3. *c*.143. § 4. In all cases where the licence granted by any justices of the peace or magistrates, or other competent persons, to any person to keep a common inn, alehouse, or victualling-house, shall, in pursuance of any charter, custom, or usage, be issued at any time of the year, except in the month of *September*, and expire at any time of the year except in the month of *September*, then the excise licence required by this act to be taken out for the sale of beer, &c. shall be taken out within ten days next after the date of the said magistrate's licence, and shall continue in force for twelve calendar months next ensuing the date of the commencement thereof. (But see 3 *G*. 4. *c*. 77. § 7. *supra*, p. 41.) (See now 5 *G*. 4. *c*. 54. § 14. Vol. II. Excise, § IV. 1. *Beer and Ale*.)

To be renewed within ten days after expiration.

By § 5. No person shall sell any beer or ale by retail, or any cider or perry, to be drank or consumed in his or her house or premises, after the expiration of his or her excise licence, unless such person shall take out a fresh licence for the said purposes in the manner herein-before directed, within ten days after the expiration of such former licence, and in like manner renew such licence from year to year; or if any person shall sell any beer, ale, &c., without first taking out an excise licence, or with-

out so renewing the same, he shall, for every such offence, forfeit 50*l*.

No appeal lies to the sessions from a conviction for selling ale without an excise licence, under 48 G. 3. c. 143. § 5.

R. v. *Hanson*, *E.* 2 *G.* 4. 4 *B.* & *A.* 519. The defendant, on the 25th day of *March*, 1820, was convicted in the penalty of 50*l*. by two justices for the West Riding of *Yorkshire*, for having within three months last past, (to wit,) on the 22d day of *February*, 1820, at *Elland* in the West Riding, sold beer and ale by retail, to be drank and consumed in his house and premises, without first taking out an excise licence authorising him so to do, contrary to the 48 *G.* 3. *c.* 143. § 5. Against this conviction the defendant appealed to the next sessions, held at *Pontefract*, who allowed the appeal and quashed the conviction, no evidence being offered in support of it, upon which the proceedings were removed into the Court of K. B. by *certiorari*. *A rule nisi* was obtained, calling on the defendant to shew cause why the order of sessions should not be quashed, upon the ground, that no appeal lay to the sessions, from the conviction in this case, and that, therefore, they had no jurisdiction to quash it. After argument, *Abbott* C. J. said, the clause of reference in the 48 *G.* 3. *c.* 143. only applies to such powers, &c. contained in laws relating to H. M.'s revenue of excise, as are provided and established for managing, raising, levying, collecting, mitigating or recovering, adjudging or ascertaining the duties thereby granted. Now the 35 *G.* 3. *c.* 113. imposed no duty, and is not an excise law. It is not, therefore, one of the laws referred to. Its object was the regulation of the police, and the provisions are quite distinct from those of 48 *G.* 3. *c.* 143. If, therefore, a person sells ale without the magistrate's licence, he sells it subject to the penalty of 20*l*. provided by that act. Against a conviction for such a penalty he may appeal; but under the 48 *G.* 3. *c.* 143. he is liable to a penalty of 50*l*. for selling without an *excise licence*, and there is no appeal given; for the rule of law is, that although a *certiorari* lies, unless expressly taken away, yet an appeal does not lie, unless expressly given by statute. No act of Parliament can be produced giving an appeal in the present case. The order of sessions is therefore wrong, and must be quashed. See *R.* v. *Dr. Drake*, *infra*, p. 56.

A *certiorari* lies unless expressly taken away: but an appeal does not, unless expressly given by statute.

48 G. 3. c. 143. Executors and assignees may have the benefit of excise licences, on death or removal, without taking out a new excise licence.

By stat. 48 *G.* 3. 143. § 6. Upon the death of any person so licensed, or upon the removal of any person so licensed from the entered house or premises in which such his or her excise licence shall authorise him or her to sell beer, ale, &c., as aforesaid, it shall be lawful for the commissioners of excise in *England*, for the time being, or any one or more of them, and for the several collectors and supervisors of excise in *England*, respectively, within their respective collections and districts, "upon the production of a certificate of a *justice* of the peace, or magistrate, or other competent person, (but see now stat. 3 *G.* 4. *c.* 77. § 6. p. 54.) given after the death or removal of the former occupier of the house or premises, approving of the person or persons to whom such certificate shall be given, to authorise and empower such person or persons in like manner to sell beer and ale by retail, or cyder and perry to be drank and consumed in his, her, or their house or premises, in the same house or premises where such person so licensed by virtue of such excise licence carried on such trade, during the residue of the term for which such licence was

originally granted, without taking out a new excise licence during the residue of the said term."

3 G. 4. c. 77. Executors, &c. of licensed person may be continued in possession of such licence, upon entering into like recognizance as the person licensed.

But stat. 3 *G.* 4. *c.* 77. § 6. Enacts "that from and after the passing of this act, if any person duly licensed to keep an alehouse or victualling house, or to sell ale, beer, or other excisable liquors by retail, in any house within that part of the U. K. called *England*, shall die before the expiration of such licence, or if any person so licensed, or the executors, administrators, or assigns of the person dying so licensed, shall remove from or yield up the possession of such house in which such ale, beer, or other liquors shall, by virtue of such licence, be sold, and shall assign such licence, (see *Form*, § XV.) (*a*) or in case any such house shall become empty or unoccupied, the late occupier whereof was duly licensed at the last general meeting previous to the time such house became empty or unoccupied, it shall and may be lawful for *two* or more of H. M.'s justices of the peace, or persons acting as such for the county, riding, city, liberty, town corporate, or place, at a special day of meeting to be holden within and for the same division or place in which the house shall be situate, to grant a *licence* or authority (see *Form*, § XV.) to the executors, administrators, or assigns of the person so dying who shall be possessed of such house, or to any new tenant or occupier, upon any such removal, or upon the house becoming unoccupied as aforesaid, to open or continue open such house as an alehouse or victualling house, or to sell ale, beer, or other liquors by retail as aforesaid therein, till the 10th of *October* then next ensuing, so as the person applying for such licence or authority shall produce such *certificate* (see *Form*, § XV.) and enter into such *recognizance* (see *Form*, § XV.) with such surety or sureties as herein-before directed; and every such recognizance to be taken and entered into at such special day of meeting, and every such certificate so to be produced, shall be returned to the respective clerks of the peace, in the same manner as the recognizances and certificates to be taken and produced at the said general annual meetings of the said justices are directed to be returned."

Excise licences renewable by collectors of excise to wife, child, assignee, &c.

And by stat. 53 *G.* 3. *c.* 103. Upon the death or removal of any licensed person or persons, the commissioners, collectors, and supervisors of excise, may empower the executors, administrators, or the wife or child of such deceased person, or the assignee or assigns of such person or persons removing, who shall be possessed of the house or premises, in like manner to trade, deal in, vend, or sell the several sorts of commodities mentioned in such licence, in the same house or premises where such person or persons carried on such trade, during the residue of the term for which such licence was originally granted, without taking out a new licence.

[illegible] G. 3. c. 143. Partnership.

§ 6. Provided that persons trading in partnership, and in one house or premises only, shall not be obliged to take out more than one excise licence to sell beer and ale by retail, &c. in any one year; and that no one licence which shall be granted by virtue of this act shall authorise any person to sell as aforesaid in any other

(*a*) The assignment may be indorsed on the back of the excise licence in form § XV.

house or premises than the house or premises in which he, she, or they shall sell or have sold beer or ale, &c. at the time of granting such licence.

48 G. 3. c. 143

No excise licence to be granted unless the magistrates have previousl granted their licence.

By § 7. Neither the commissioners of excise in *England*, nor any persons who shall be appointed by them to grant licences to persons for selling beer or ale by retail, or cyder or perry, to be drank or consumed in the house or premises of the person or persons applying for such licence, nor any of the collectors or supervisors of excise shall grant any licence to sell beer or ale, &c. or any licence to sell spirituous liquors or strong waters, or wine or liquors by retail to any person or person who shall not produce a licence or authority granted to him, her, or them, in due form of law, by justices of the peace or magistrates, or other competent persons, to such person or persons to keep a common inn, alehouse, or victualling-house, and every such licence or authority shall be in the form following. *Vide post*, § XV.

Not to repeal any regulation as to licence granted by magistrates under charter, &c.

By § 8. It is enacted, "that nothing in this act shall extend or be construed to extend to repeal or alter, or in any manner to affect any law or laws, or any provision in any charter or charters, or any privilege of any city or town corporate, or of any university, now in force or lawfully used or exercised, in relation to the granting of licences by any justices, magistrates, or other persons authorised by law to grant licences for persons keeping common inns, alehouses, or victualling-houses: or in relation to the taking of any recognizance upon granting of any such licences, or requiring or doing any other act, matter, or thing relating to any such licences: save and except as to the payment of duties and form of licence as aforesaid, or to repeal or alter any act or acts of parliament as to the sale of table-beer, at a price not exceeding 1½*d*. per quart."

Justices' clerk to take the same fees as heretofore.

By § 10. Nothing in this act shall extend to alter any fees heretofore lawfully taken by any clerks of any justices or magistrates, but it shall be lawful to continue to take such fees and no other, for licences to keep any common inn, alehouse, or victualling-house as have heretofore been taken by such clerks in that behalf.

No person, disabled from keeping such houses by conviction, shall sell exciseable liquors.

By § 11. It is enacted, "that every person having any licence to keep a common inn, alehouse or victualling house, who shall be disabled by any conviction from keeping a common inn, alehouse, or victualling-house, shall also by such conviction be disabled from selling any beer or ale by retail, or cider or perry, to be drank or consumed in his, her, or their house or premises, under any excise licence obtained for such purposes; and every such excise licence shall from the time of such conviction be null and void to all intents and purposes; and in all cases of prosecution of any such persons, whose excise licences shall have become null and void by such conviction, a certificate from the clerk of the peace, or person acting as such, of any such conviction shall be legal evidence; which certificate such clerk of the peace, or other person is hereby authorised and required to grant on demand, without fee or reward."

It has been decided, that to authorise a person to keep a public house, and sell ale and spirituous liquors, two licences are necessary, *first*, a magistrate's licence, under stat. 48 *G*. 3. *c*. 143.; and, *secondly*, an excise licence. Neither is operative alone, both

48 G. 3. c. 143.

together they become so. Without the magistrate's licence the public-house cannot be opened; without the excise licence, even when opened, no exciseable liquors can be legally sold. The penalty for not having the former is under the 35 *G.* 3. *c.* 113.; the latter under 48 *G.* 3. *c.* 143. § 5. *Rex* v. *Dr. Drake and another. H.* 57 *G.* 3. MS. *Rex* v. *Downes,* 3 *T. R.* 560. cited.

Recovery of fines, &c.

By § 12. All fines, penalties, and forfeitures imposed by this act, shall be sued for, recovered, levied, or mitigated by such ways, means, or methods, as any fine, &c. may be sued for by any law of excise, or by action of debt, bill, plaint, or information in any of H. M.'s courts of record at *Westminster,* and one moiety of every such fine, &c. shall be to H. M., and the other moiety to the person who informs or sues for the same.

By § 13. The powers of former acts relating to H. M.'s revenue of excise are extended to this.

General observations on the present system of licensing.

It is right that magistrates should attend particularly to the difference between the present and late modes of licensing. Previously to stat. 48 *G.* 3. *c.* 143. the licence was granted by magistrates; now it is granted by the commissioners, collectors, or supervisors of excise, upon the production of a licence previously obtained from the magistrates. — Upon the decease or removal of the person originally licensed at the last licensing day, the magistrates were empowered by the prior statutes to renew the licence to the executors of such person, or to the succeeding tenant or occupier, till the next licensing day, upon receiving from the executors, &c. within 30 days, a certificate and recognizance according to 26 *G.* 2.—Next, by stat. 48 *G.* 3. *c.* 143. § 6. in case of a licensed person dying or removing, the commissioners, collectors, or supervisors of excise would empower an executor or assignee bringing a certificate of approbation from *a magistrate or other competent person,* to keep open the house as a public-house till the expiration of the original licence. But now, since stat. 3 *G.* 4. *c.* 77. § 6., it seems that *one* justice of peace or magistrate has no longer power to grant his certificate in order to the continuance of a licence on assignment by, or on death or removal of the licensed person: but that two or more justices or magistrates, at a special meeting, may grant a licence to the executors, administrators, or assigns, or to the new tenant, to keep the house open till the ensuing 10th day of *October,* on the applicant's producing the certificate of good conduct from the parson, &c. and other persons mentioned in § 2. and entering into recognizance, with sureties, as in § 1. directed. The forms of the *recognizance,* and magistrate's *licence,* are given by the stat. 3 *G.* 4. *c.* 77. Sched. (A) and (B) (see *infra* § XV.) And the forms, first, of the *notice* required by § 17. to be given to the justices' clerk of intention to apply for a licence; secondly, of the *certificate* of good conduct required by § 2., to be produced before any licence is granted; and which, by § 6., is again required to be produced on two or more justices in special meeting granting a licence to continue a house open after the death or removal of the licensed occupier before the expiration of his licence; and, thirdly, of the last mentioned *licence* itself will be found, *infra,* § XV.

The statute 48 *G.* 3. *c.* 143. did not repeal the former statutes relating to licensing, but the stamp duties and the old form of licence only. It requires the magistrate's licence to be granted in *due form*

of law, and contains a general reference to the provisions of former excise acts. The stat. 3 *G.* 4. *c.* 77. altered the form of licence given by 48 *G.* 3. *c.* 143., and declares (§ 24.) that nothing therein is intended to repeal any former acts, except where expressly repealed, altered, or amended by it. — The several provisions of 26 *G.* 2. *c.* 13. and 32 *G.* 3. *c.* 59. and other statutes as to licensing are therefore retained, and also the necessary forms of precedents.

The licence for retailing spirituous liquors is treated of at large under the title Excise, *Spirituous Liquors.*

Wine licence. See Excise, *Wine.*

Licence for Made Wines. See Excise, *Sweets.*

III. *Penalties on selling Ale without a Licence.*

35 G. 3. c. 113. Former penalties repealed. New penalties inflicted. For selling without licence.

By stat. 35 *G.* 3. *c.* 113. So much of 5 *G.* 3. *c.* 46. as relates to the penalties for selling ale without licence is repealed, and other penalties are inflicted in lieu thereof, as follows: after the 20th *Sept.* 1795, "If any person shall sell ale or beer, or any other exciseable liquors by retail, or shall permit or suffer any ale or beer or any other exciseable liquors to be sold by retail, in his, her or their house, out-house or yard, garden, orchard or other place, in that part of G. B. called England, the dominion of Wales and town of Berwick-upon-Tweed, without being duly licensed so to do, and shall thereof be duly convicted, every such person so offending shall, for every such offence, forfeit and pay the sum of 20*l.*, and also the costs and expenses attending the conviction, to be levied and recovered as herein is directed; and on and after a second conviction for the like offence, shall also be rendered incapable of being thereafter licensed to keep an alehouse, or to sell ale or beer or other exciseable liquors by retail."

Exceptions. Persons selling ale or beer in casks containing five gallons, &c.

But by stat. 38 *G.* 3. *c.* 54. § 13. No person shall be liable to the said penalty, for selling beer or ale in casks, containing not less than five gallons, or in bottles not less than two dozen reputed quart bottles, not to be drank in his house, out-house, yard, garden, orchard, or other place.

35 G. 3. c. 113. Penalties how to be recovered and applied.

And by stat. 35 *G.* 3. *c.* 113. § 2. 5. One justice may hear and determine the same, in a summary way, and upon information (I.) exhibited, or complaint made to him, shall summon (K.) the party accused, and also the witnesses on either side; and upon appearance, or contempt by not appearing, shall proceed to hear the matter, and examine the witnesses on oath, and give judgment therein; and upon proof of the offence either by confession, or oath of one witness, may convict (L) the party accused; and if he, being then present, shall not at the time, or if absent, within three days after notice (M) either personally served upon him, or left for him at the place where the offence was committed, pay the said penalty, together with the costs and expenses, to be ascertained by such justice, the same shall be levied by distress (N) of the goods and chattels of such offender wheresoever found within the jurisdiction of such justice, or in any entered place of such offender, in the like manner as directed by 27 *G.* 2. *c.* 20. and 33 *G.* 3. *c.* 55. (*a*) as far as the same relates to the execution of

(*a*) See 27 *G.* 2. *c.* 20. and 33 *G.* 3. *c.* 55. *post*, title Distress, § 20. *By Warrant of Justices of Peace.*

35 G.3. c. 113.

Application of penalty.

warrants of distress, as fully as if the powers of the said acts had been repeated herein; and shall be applied half to the informer and half to the poor of the parish, township, or place in which, &c. in such manner as such justice shall direct; and if a return shall be made that sufficient distress cannot be found whereon to levy the penalty and costs as aforesaid, it shall and may be lawful for any justice of any county or place within whose jurisdiction the party offending shall be found, upon producing to him such warrant and return, (and if such justice shall be of any other county or place, then upon oath made of the hand-writing of the justice granting such warrant, and of the truth of such return,) to commit (O) such offender to the common gaol, or other prison within his jurisdiction, for any term not exceeding six nor less than three calendar months, unless such penalty and the costs of all proceedings upon the conviction and warrant be sooner paid.

Distress may be sold within four days, on request.

§ 3. Provided, that on the request of the owner, such distress may be sold within the four days allowed by the said act of 27 *G.* 2. *c.* 20. § 3.

Allowance to persons executing warrants, &c.

§ 4. And there shall be allowed to the officer executing such warrant of distress, for the safe keeping of the goods distrained, such sum not exceeding 5*s. per* day, and for any assistant any sum not exceeding 2*s. per* day for each, as the convicting justice shall direct on proof on oath, that sufficient cause existed for calling in the aid and assistance of such person or persons.

What shall be deemed legal notice to persons summoned.

§ 6. And after reciting that many persons carry on the trade of alehouse-keeper and victualler, and retailer of beer and ale, without licence, and make entry of places for keeping the same, by assumed or feigned names, and such beer and ale is frequently retailed in houses and places detached from their places of residence, whereby the law hath been evaded, it is enacted, that in case any summons shall be issued by any justice for any person to appear and answer to any information or complaint for selling by retail any beer, ale or other exciseable liquors, without licence, the directing such summons to such person by the name in which he made such entry, or is usually known, whether the same be his real or assumed or feigned name, and leaving such summons at such house or place where such offence is stated in the information to have been committed, and affixing a copy thereof on the door, or other conspicuous part on the outside thereof, (such service being proved on oath of the person who shall have so served and affixed up such summons and copy,) shall be deemed a sufficient notice or summons to all intents and purposes.

Retailers to make entry, on penalty of 50*l*.

§ 7. And every alehouse-keeper, victualler or retailer of beer or ale, who shall take or receive into or have in his custody, possession or power, any beer or ale to sell by retail, shall, at least three days before he shall begin so to sell or dispose thereof, make a true and particular entry in writing at the next excise-office of every house, out-house, cellar, vault, room, storehouse or other place to be used for keeping or selling the same; which said entry shall set forth his true name, and whether he be an alehouse-keeper, victualler or retailer; and such person shall be deemed the occupier or proprietor of every such place, so long as such entry shall remain in force, or such ale, &c. shall be in the custody, possession or power of the person making such entry, on pain of forfeiting 50*l*. to be recovered, levied, mitigated and distributed, as by

the laws of excise; and every such storehouse, &c. so used without being so entered, shall be deemed a private and concealed place, within the meaning of this and every other act now in force, relating to concealed places for keeping exciseable liquors.

35 G. 3. c. 113.

§ 8. And all beer, ale, and other exciseable liquors, and all other goods and chattels found in any house or place where any such offence shall have been committed, or in any place belonging thereto, or occupied therewith, or which hath been entered as aforesaid, by whom, or by what title soever the same shall be claimed, shall be liable to such distress, costs, &c. in like manner as if such offender had been the real owner.

Goods found where any offence is committed, liable to distress.

§ 9. And every person who shall make such entry as aforesaid, shall be deemed a seller of such liquors by retail; and any justice may summon before him, or before any other justice, any excise officer, having the custody of entries, who shall, when required, produce every entry made within his division, and also his stock-book and other account of survey, and any such justice may examine on oath any such officer respecting such entry, or the stock of any person making such entry; and if it shall appear that any person hath made entry as aforesaid, or is surveyed as an alehouse-keeper, victualler or retailer, and has not received or is not entitled to the abatement allowed to common brewers, then such justice may summon such person to produce his licence to sell beer and ale, and if he shall not at the return of such summons appear, or appearing shall not produce his licence, such justice (on proof of due service of such summons, if such person shall not appear) may adjudge him guilty of selling beer or ale by retail without licence.

Who shall be deemed retailers.
Excise officers may be summoned to produce entries and stock-book,

and retailers to produce licences.

§ 10. And if any person shall be summoned as a witness, and shall neglect or refuse to appear at the time and place appointed, without a reasonable excuse (to be allowed by such justice), or, appearing, shall refuse to be examined on oath, and give evidence, he shall forfeit 10*l.* to be levied by warrant of distress, [to be applied to the poor where such offence was committed, in such manner as such justice shall direct]; and for want of sufficient distress, such offender shall be committed by the said justice to the common gaol or other prison, for (not exceeding) six calendar months, unless such penalty shall be sooner paid.

Witnesses not appearing forfeit 10*l.*

§ 11. And if any person, after service of any summons to appear to any charge of selling ale or beer or other exciseable liquors, without licence, shall convey away any goods or chattels herein-before made liable to distress from the house or place wherein such offence shall have been committed, or belonging thereto, or occupied therewith, or which hath been entered as aforesaid, it shall be lawful for the officer to whom such warrant is directed, or other person acting in his aid or assistance, within 30 days after such conveying away, to seize the same wherever they may be found, and dispose of them in such manner as if they had been distrained on the premises. And if carried out of the jurisdiction of the justice, who originally issued the warrant, any justice of the county, city, liberty or place into which the same shall be so conveyed, is required, on proof on oath of the hand-writing of such justice originally signing such warrant, to indorse his name on the back thereof, which shall be sufficient authority to any person bringing such warrant, and to all other persons to whom the same was originally directed, to execute the same, and to proceed as if such

Goods conveyed away may be distrained within 30 days wherever found.

Warrants may be indorsed.

35 G. 3. c. 113.

goods had been seized within the jurisdiction of the justice who signed the original warrant.

Appeal to the quarter sessions.

§ 12. And if any person shall think himself aggrieved by the judgment of such justice, he may appeal against any such conviction to the next general quarter sessions of the peace, (and such justice shall make known to such person at the time of such conviction the right to appeal,) unless such sessions be holden within six days next after such conviction, and in such case to the next subsequent sessions, and not afterwards; such person, at the time of such conviction, giving to such justice notice in writing of his intention to appeal, and also giving security, to the satisfaction of such justice, for the payment of the penalty and costs in case such judgment be confirmed on appeal; and also further, entering into a recognizance at the time of such notice, with sufficient sureties, to try the appeal, abide the judgment, and pay such costs as shall be awarded at such sessions. And the judgment of such sessions shall be final and conclusive; and if the justices at such sessions shall adjudge such appeal to be frivolous or vexatious, they may give costs to the party aggrieved by such appeal, not exceeding 5*l.* in the whole. But no appeal lies to the sessions, from a conviction for selling ale without an excise licence. *Rex* v. *Hanson*, *ante*, p. 53.

Notice of intention to appeal.
Recognizance to be entered into.

Judgment of sessions to be final.
Power to give costs.
Conviction.

§ 13. And the conviction shall be in the form or to the effect expressed in 26 *G.* 2. *c.* 31., *mutatis mutandis*, as the case may be, and shall be good and effectual to all intents and purposes whatsoever, without stating the case, or facts or evidence, in any more particular manner(L), and shall be certified to the next sessions, to be filed among the records.

Penalties may be mitigated for the *first* offence.

§ 14. Provided, that where it shall be proved to the satisfaction of such justice, that such offender hath not been before convicted of any offence against this act, such justice may mitigate the penalty hereby imposed, (in case of such first offence, but not otherwise,) to not less than 10*l.*

Inhabitants may be witnesses.

§ 15. And any inhabitant of any parish, township or place in which any such offence shall be committed, shall be deemed a competent witness.

Prosecutions to be in six months.

§ 16. Provided that all penalties within this act shall be sued for and determined within six months after the offence is committed.

An indictment will not lie for selling ale without licence; for where an act of parliament gives a particular penalty, the party shall not be punished by indictment. *Anon.* 6 *Mod.* 86. See also 1 *Saund.* 250 *e.* n. (3).

26 G. 2. c. 31. § 9.
Persons suspected of selling ale without a licence.

Also where any justice shall suspect that any alehouse-keeper, victualler, or retailer, sells ale, beer, cyder, or perry, without licence, he may call such person before him, and also any excise officer or gauger to produce his stock-book or other account of the charge or survey of such suspected person, and may examine such excise officer or gauger on oath in what manner he charges such person, and how such person pays the duties; and if it shall appear by such stock-book or account, or oath of the officer, that such person is surveyed as a victualler or retailer, and is charged with the same duties that victuallers and retailers are charged with and pay for any of the liquors aforesaid, and is not entitled to the allowance or abatement given to common brewers, he shall be deemed an alehouse-keeper, victualler, retailer, or seller of any of

the liquors aforesaid to all intents and purposes, as if the same had been proved by two witnesses. *Vide etiam* 35 *G*.3. *c*.113. § 9. *ante* 59.

35 G.3. c. 113. Selling in fairs.

And by 35 *G*. 3. *c*. 113. § 17. It is enacted, "that nothing in this act contained shall extend, or be construed to extend, to prohibit any person or persons from selling of any ale or beer in booths or other places, at the time and place of holding any lawful and accustomed fair, in like manner as such person or persons was or were authorised to do before the passing of this act, by virtue of any law or statute in that behalf."

Selling in fairs.

The clause excepting *fairs*, in the several acts, is from the necessity of the thing, respecting the accommodation of persons resorting thither. But those who shall brew such ale or beer, to be sold by them in fairs, must take care to give notice to the gaugers, that the same may be surveyed; for though they are exempted from taking licence, yet they must nevertheless pay the duties of excise. And this indulgence seemeth to be intended only in the place where the common fair is held; and not in any private house, which may be within the limits of the town where such fair shall be kept, especially where there are licensed alehouses sufficient.

4 Jac. c. 4.

By stat. 4 *Jac*. *c*. 4. § 1. If any person shall sell or deliver any beer or ale to any person that shall then sell beer or ale as a common tippler or alehouse-keeper, the same person not having licence to sell ale or beer (except it be for the use of his household only), he shall forfeit for every barrel sold 6*s*. 8*d*., and so after that rate for a greater or lesser quantity; § 2. half to the poor, and half to him that shall sue in sessions, by action of debt, information, indictment, or presentment.

IV. Recognizance, and Forfeiture thereof.

3 G.4. c.77. Requiring persons to whom any licence shall be granted to enter into recognizances in the form prescribed by schedule (A).

By stat. 3 *G*. 4. *c*. 77. § 1. It is enacted, "that from and after the passing of this act, every person to whom the justices of the peace or magistrates shall grant a licence or authority to keep a common inn, alehouse, or victualling-house, or to sell ale, beer, cyder, perry, or other exciseable liquors by retail, within that part of the U. K. called *England*, shall upon such licence or authority being granted or issued, enter into a recognizance to H. M., his heirs and successors, in the sum of 30*l*., with one sufficient surety in the sum of 20*l*., or two sufficient sureties in the sum of 10*l*. each, which recognizance, with the condition thereof, shall be in the form prescribed by the schedule to this act marked (A); and in case the person applying for such licence shall be hindered through sickness or infirmity, or any other reasonable cause, to attend in person at the meeting of the same justices or magistrates for granting the said licences or authorities, that then it shall be lawful for them to grant such licence or authority upon two sufficient sureties entering into such recognizance, each surety in the penalty of 30*l*., for performance of the condition of the said recognizance, and which said recognizance shall be acknowledged in the presence of the majority, and signed by at least two of the justices or magistrates present at any such meetings for granting licences or authorities, and the same, with the condition thereof fairly written or printed, shall forthwith, or at the next general or quarter session of the peace at farthest, after granting such licence or authority, be sent or returned to the clerk of the peace,

In case persons applying for licences shall be prevented by sickness, &c. from attending the justices, then justices may grant same on taking security.

3 G. 4. c. 77.

or person acting as such, for every county, riding, city, liberty, town corporate, or place in that part of the U. K. called *England*, wherein such licences or authorities shall be granted, to be by the said clerk of the peace, or such other person acting as such, duly entered or filed amongst the records of the sessions of the peace; and that for every such licence or authority granted without taking such recognizance, and for every such recognizance taken and not sent or returned as aforesaid, every justice of the peace or magistrate signing such licence or authority shall forfeit and pay the sum of 3*l.* 6*s.* 8*d.*

Penalty for granting licence without recognizance.

§ 3. Enacts "that the recognizance, in the form and with the surety or sureties hereby required to be entered into on granting licences or authorities to persons to keep alehouses or victualling-houses, or to sell ale, beer, or other exciseable liquors by retail, and the certificate in the form and with the signatures hereby required to be produced, by persons not licensed for those purposes the preceding year, shall also be entered into and produced by persons applying for and obtaining such licences or authorities, at any special meetings of the justices to be holden for those purposes, pursuant to the directions of the statute made and passed in the 32d year of the reign of his late majesty king *George* the 3d, intituled *An act to amend so much of two acts, made in the 26th and 29th years of the reign of his late majesty king* George *the 2d, as relates to the licensing of alehouse-keepers and victuallers, and for better regulating alehouses, and the manner of granting such licences in future; and also of granting licences to persons selling wines to be drank in their houses.*"

Recognizances to be presented to justices at special meetings to be held for that purpose.

32 G. 3. c. 59.

§ 4. Enacts "that the register or calendar required by law to be kept by clerks of the peace, of recognizances to be taken and returned by justices of the peace, on granting such licences as aforesaid, shall contain the names and places of abode of the several sureties who shall so enter into such recognizances; and that as well the entries of the names of such sureties, as of the other particulars of such recognizances already required to be registered, shall and they are hereby required to be entered by the respective clerks of the peace, or other persons acting as such, to whom such recognizances shall be returned; and that for every recognizance there shall be paid, by the clerk or clerks to the justices taking such recognizances, to the said clerk of the peace, as their fee for filing or recording the said recognizances and for making such entry thereof, and of the names or name of the sureties or surety to be thereby bound, and for making and delivering copies of the said register, as by law required, the sum of 2*s.* and no more, which shall be paid to the clerks of the said justices by the persons licensed, over and above the fees payable by law to the said justices' clerks; and it shall be lawful for any person or persons on application, at all seasonable times, to see, inspect, and examine every such register, so to be kept by the said clerks of the peace, on payment or tender made by the person or persons requiring the same, to such clerks of the peace, of the sum of 1*s.* for every such inspection or examination.

Names of sureties to be entered in a book.

Fee 2s.

Registers of sureties open to public inspection.

§ 9. "And whereas by the laws now in force in that part of the U. K. called *England*, persons selling ale, beer, or other exciseable liquors by retail, are liable and subject to different penalties and punishments for disorderly conduct committed, or permitted

or suffered in their houses; and by an act made and passed in the 26th year of the reign of his late majesty king *George* the 2d, intituled *An act for regulating the manner of licensing alehouses in that part of* G. B. *called* England, *and for the more easy convicting persons selling ale and other liquors without licence*, it is enacted, that any justice of the peace for any county, riding, city, liberty, or town corporate, wherein such licence shall be granted, upon complaint or information that such licensed person had done or committed any act, offence, or misdemeanor, whereby in the judgment of the same justice the recognizance of such licensed person might be forfeited, or the condition thereof broken, might by summons under his hand and seal require such person so complained of or informed against to appear at the next general or quarter sessions of the peace for the said county, riding, city, liberty, or town corporate, then and there to answer the matter of such complaint or information, and also might bind the person or persons so making such complaint or information, or any other person or persons, in a recognizance to appear at such general or quarter sessions, and give evidence against such persons complained of or informed against; and the justices of the peace, in their general or quarter sessions, should have full power to direct the jury which should attend at such sessions for the trial of traverses, or some other jury of twelve honest and substantial men, to be then and there impannelled by the sheriff, without fee or reward, to inquire of the misdemeanor charged in the said complaint or information; and if such jury should find that the person so complained of or informed against had done any act whereby the condition of his recognizance was broken, such act being specified in such complaint or information, it should or might be lawful for the court, at such general or quarter sessions, to adjudge such person guilty of the breach of such recognizance, which verdict and adjudication should be final to all intents and purposes; and thereupon the said justices should order the recognizance entered into by such offender to be estreated into H. M.'s court of Exchequer, to be levied to H. M.'s use; and that the said person, the condition of whose recognizance should be so adjudged to be broken and forfeited, should, from and after such adjudication, be utterly disabled to sell any ale, beer, cyder, perry, spirituous liquors, or strong waters, for the space of three years; and any licence or licences granted or to be granted to such person during such term should be void and of none effect; be it further enacted that so much of the said recited act of the 26 *G.* 2. *c.* 31. as relates to the forfeiture of the recognizance of any person licensed to keep a common alehouse or victualling-house, or to sell ale, beer, or other exciseable liquors by retail, and the subsequent disability of such party on such adjudication to hold a licence for the space of three years, be and the same is hereby repealed; and also, that from and after the passing of this act, the several statutes and acts, and parts of statutes and acts following, shall be repealed; that is to say, so much of a statute passed in the 1st year of the reign of king *James* the 1st, as relates to penalties and punishments of innkeepers, victuallers, and alehouse-keepers for the offences therein mentioned, *viz.* § 2.; and also so much of two statutes passed in the 7th and 21st years respectively of the reign

3 G. 4. c. 77.

26 G. 2. c. 31.

Recited act in part repealed.

3 G. 4. c. 77.
Repeal of certain acts and parts of acts.
1 J. 1. c. 9.

7 J. 1. c. 10.
21 J. 1. c. 7.

of king *James* the 1st, as relates to the disabling persons to keep an alehouse for three years in the cases therein mentioned: and also so much of a statute passed in the first year of the reign of king *Charles* the 1st, as relates to the penalty on alehouse keepers and victuallers therein mentioned; and also so much of an act passed in the 30th year of the reign of king *G.* the 2d., as relates to the penalty on persons licensed to sell any sorts of liquors in the case therein mentioned, and which said several acts and parts of acts are hereby repealed accordingly; and that from and after the passing of this act, every licensed person selling ale, beer, or other exciseable liquors by retail, in that part of the U. K. called *England*, who shall be lawfully convicted of any offence against the condition of any subsisting recognizance entered into by such licensed person, or against the tenor of any license granted and now subsisting, or hereafter to be granted, or against the condition of the recognizance by this act required to be entered into by such licensed person, or against the tenor of the licence to be granted by virtue of this act, shall for every such offence forfeit and undergo the several penalties and punishments and disabilities hereinafter mentioned and provided in that behalf, instead and in lieu of the several pecuniary and other punishments and disabilities which they are now or immediately before the passing of this act were liable or subject to by any law then in force; (that is to say), for the first offence a sum not exceeding 5*l.*, with the costs and expenses of convicting such offender; and in case the said penalty, with the costs and expenses of convicting such offender, shall not be paid within the space of 14 days next after such conviction, that then the offender shall suffer imprisonment for the space of one month, in the common gaol or house of correction for the county, riding, city, liberty, town corporate, or place where such conviction shall take place, unless he or she shall sooner pay such penalty, and the costs, charges, and expenses of such conviction, and executing the same; and for the second offence a sum not exceeding 10*l.*, and also the costs and expenses of convicting such offender; and in case such penalty, with the charges and expenses of convicting such offender the second time, shall not be paid within the space of seven days next after such second conviction, that then the offender shall suffer imprisonment for the space of two calendar months, in such common gaol or house of correction as aforesaid, unless he or she shall sooner pay such second penalty, and the costs, charges, and expenses of such second conviction, and executing the same; and for the third offence against the tenor of such licence or recognizance, it shall be lawful for any one justice of the peace of any county, riding, city, liberty, or town corporate, or place wherein such licence shall be granted, and it is hereby required of him, upon complaint or information on oath that such licensed person hath committed such third offence, to issue a summons under his hand and seal, requiring such person so complained of or informed against for such last-mentioned offence to appear at the next general or quarter sessions of the peace for the county, riding, city, liberty, town corporate, or place wherein the person so complained of or informed against shall reside, then and there to answer to the matter of such complaint or information, and also to bind the person or persons who shall

1 C. 1. c. 4.

30 G. 2. c. 24.

Offending against condition of recognizances.

Penalties: First offence not exceeding 5*l.*

Second offence not exceeding 10*l.*

Third offence not exceeding 100*l.*

make such complaint or information, or any other person or persons, in a recognizance to appear at such general or quarter session and give evidence against such person so complained of or informed against; and the justices of the peace in their general or quarter sessions of the peace shall have power to direct the jury which shall attend at such sessions for the trial of traverses, or some other jury of twelve honest and substantial men, to be then and there impannelled by the sheriff, bailiff, or other chief officer, without fee or reward, to enquire of the misdemeanor charged in the said last-mentioned complaint or information; and if such jury shall find that the person so complained of or informed against hath committed any act against the tenor of the said recognizance, such act being specified in the said complaint or information, and such person so complained of or informed against having been twice previously convicted for offences against the tenor of the said licence and recognizance, it shall and may be lawful for the court at such general or quarter sessions to adjudge such person guilty of a third offence against the tenor of and a breach of the said recognizance, which verdict and adjudication shall be final to all intents and purposes; and thereupon the said justices shall have power and authority to punish the party so to be convicted by fine, not exceeding the sum of 100*l*., or at the discretion of the said court to declare the said recognizance so entered into by the said offender to be forfeited, or immediately to adjudge the licence or authority granted to such offender to be forfeited and void; and on such last-mentioned adjudication on such verdict, such licence shall from thenceforth be void accordingly, and every licence then held by such offender to sell spirituous liquors, cyder, perry, or *British* sweets, shall thereupon also be void; and the said person, the condition of whose recognizance shall be so adjudged to be broken and forfeited, shall from and after such last-mentioned adjudication be utterly disabled to sell ale, beer, cyder, perry, spirituous liquors, or strong waters, for the space of three years, to be computed from the time of the offence committed for which such adjudication shall be pronounced; and any licence or licences granted or to be granted to such person during such term, to be computed as aforesaid, shall be void and of none effect; provided, that the said justices may, at the request of the prosecutor or party so complained of or informed against, or either of his or her sureties, and upon sufficient cause shewn, adjourn the hearing and trial of the said complaint or information to the then next general or quarter sessions of the peace, when the same shall be finally determined: Provided always, that no recognizance under this act shall be declared to be forfeited, unless upon being directed so to be by the said court of general or quarter sessions, upon such third conviction as aforesaid; and provided also, that if such licensed person or persons so complained of or informed against for such last-mentioned offence shall not appear at the next general or quarter sessions of the peace pursuant to the summons, it shall and may be lawful for the justices in their general or quarter sessions assembled, on proof of the service of such summons, to enquire into the matter alleged, and on proof thereof to proceed against the person or persons so summoned and not ap-

3 G. 4. c. 77.

Power of justices in sessions.

Verdict, &c. to be final.

Justices may postpone trials, &c.

Recognizances not forfeited unless declared so by quarter sessions.

3 G.4. c.77.

pearing, in the same manner as if such person or persons had appeared pursuant to his, her, or their recognizance."

Production of recognizance by clerk of peace, sufficient evidence of the person complained of being a licensed victualler.

§ 10. Provides, declares, and enacts, "that on every such enquiry so directed to be made before a jury as aforesaid, the production of the recognizance entered into by the party complained against, or by his sureties, and filed with the clerk of the peace or person acting as such, shall be sufficient evidence of the fact of such party so complained against being a licensed victualler: Provided always, that if the jury to be impannelled to try the matter of such complaint or information shall, on such trial, find the party so complained of or informed against not guilty of the offence so laid to his or her charge, or if on the verdict of guilty by such jury the court shall adjudge the offender to be punished by fine, or by declaring the recognizance to be forfeited, instead of vacating the licence of such offender as aforesaid, the party so holding or possessing such licence shall nevertheless, after such adjudication of not guilty, or punishment by fine on a verdict of guilty, be liable to the same punishment and disability as any other licensed victualler who shall have been twice convicted of offences against the condition of his or her recognizance, on any subsequent complaint or information and enquiry thereon at such court of sessions, for any offence in breach of such recognizance and licence."

Clerks to justices to be deemed prosecutors.

§ 11. Enacts, "that in all cases where complaint or information shall be made against any person so licensed as aforesaid for a third offence against the tenor of his or her recognizance, the justices of the peace before whom such complaint or information shall be made shall, if they shall deem such offence to amount to a breach of such recognizance, and they are hereby required, to order the subsequent proceedings at the sessions to obtain an adjudication on such complaint or information to be carried on by the clerk or clerks, or the person or persons acting as such, to the general annual meetings of the justices for licensing alehouses and victualling-houses for the division or place where such house shall be situated; and such clerk or clerks are hereby authorised and required to conduct such prosecution accordingly; and the expenses attending such prosecution shall and they are hereby directed to be borne and defrayed out of the rate or rates made and levied, or to be made and levied, for the maintenance of the poor of the parish or place where such offence shall be committed."

Expenses to be paid out of poor rates.

5&6 Ed.6. c.25. 26 G.2. c.31.

By stats. 5&6 *Ed*.6. *c*.25. § 2. 26 *G*.2. *c*.31. § 1. For every licence granted, without taking such recognizance, and for every such recognizance taken, and not sent or returned, every justice signing such licence shall forfeit 3*l*. 6*s*. 8*d*.

26 G.2. c.31. Penalty for licensing otherwise.

The forfeitures for granting licences, without taking recognizances, shall be to him who shall sue, together with costs. 26 *G*.2. *c*.31. § 6.

But it is not said who shall have the penalty for not returning the recognizance to the clerk of the peace: therefore that shall go to the king.

Recognizances to be registered.

And the clerk of the peace shall keep a register or calendar of all such recognizances, and shall deliver to the justices at the meeting for granting licences a true copy of such register or

calendar. And for every recognizance shall be paid by the clerks of the justices taking such recognizances, to the clerk of the peace, for filing or recording the same, and for making and delivering the copies of the register or calendar, the sum of one shilling; which shall be paid to the clerks of the said justices by the persons licensed, over and above the fees payable to the said justices' clerks.

26 G.2. c.31. Fee for the recognizance.

By stat. 5&6 *Ed.* 6. *c.* 25. § 3. The justices shall have power, in their quarter-sessions, by presentment, information, or otherwise, by their discretion, to enquire of all such persons as shall be admitted and allowed to keep any alehouse or tippling-house, and shall be so bound by recognizance, if they have done any act whereby they have forfeited the same recognizance; and the said justices shall upon such presentment or information, award process against every such person so presented or complained upon before them, to shew why he should not forfeit his recognizance; and shall have power to hear and to determine the same, by all such ways and means as by their discretion shall be thought good.

5&6 Ed.6. c.25. Process on the recognizance.

By stat. 57 *Geo.* 3. *c.* 19. For the more effectually preventing seditious meetings, it is enacted, § 29., "that it shall be lawful for any two or more justices of the peace acting for any county, stewartry, riding, division, city, town, or place, upon evidence on oath that any meeting of any society or club hereby declared to be an unlawful combinaton and confederacy, or any meeting for any seditious purpose, hath been held, after the passing of this act, at any house, room, or place licensed for the sale of ale, beer, wine, or spirituous liquors, with the knowledge and consent of the person keeping such house, room, or place, to adjudge and declare the licence or licences for selling ale, beer, wine, or spirituous liquors, granted to the person or persons keeping such house, room, or place, to be forfeited; and the person or persons so keeping such house, room, or place, shall, from and after the day of the date of such adjudication and declaration, and notice thereof given to him, her, or them, be subject and liable to all and every the penalties and forfeitures for any act done after that day, which such person or persons would be subject and liable to if such licence or licences had expired or otherwise determined on that day. [See also stat. 39 *G.*3. *c.*79. § 14. 21. Vol. V. tit. Riot; and for forms of conviction, &c. for offences against both statutes, see Vol. V. tit. Riot.]

57 G.3. c.19. Licenses of public houses where unlawful clubs are held to be forfeited.

V. Offences in brewing Ale.

By stat. 1 *W. sess.*1. *c.*24. § 17. No common brewer or retailer of beer or ale shall use, in the brewing or working of any beer or ale, any molosses, coarse sugar, honey, or composition or extract of sugar, upon the penalty of forfeiting the liquor, and also 100*l.*, half to the king, and half to him that shall sue in six months.

1 W.3. sess.1. c.24.

And by stat. 10 & 11 *W. c.* 21. § 34. If any common brewer or retailer of beer or ale shall use any molosses, coarse sugar, honey, or composition or extract of sugar, in the brewing, making, or working of any ale or beer; or if any common brewer shall

10&11 W. c.21. Using sugar, honey, &c. in brewing.

10&11 W. c. 21. receive into his custody any quantity of any of the said materials exceeding 10*l.*, he shall forfeit 100*l.*, to be recovered and mitigated as by the laws of excise; and by § 20. the servant or other assisting therein shall forfeit 20*l.* in like manner, and in default of payment shall be imprisoned three months.

9 Ann. c. 12. Using wormwood, &c. in brewing.

And by stat. 9 *Ann.* c. 12. § 24. 26. No common brewer, innkeeper, or victualler, shall use any broom, wormwood, or any bitter ingredient (to serve instead of hops) in brewing or making any beer or ale for sale (except infusing broom or wormwood, after it is brewed and tunned, to make broom or wormwood ale or beer), on pain of 20*l.*, half to the king, and half to the prosecutor, to be levied as by the laws of excise.

12 Ann. st. 1. c. 2. Using unwholesome ingredients.

And by 12 *Ann. stat.* 1. *c.* 2. § 32. No common brewer or retailer of beer or ale shall use any sugar, honey, foreign grains, guinea pepper, essentia bine, coculus Indiæ, or any unwholesome ingredients in the brewing of beer or ale, or mix any of them therewith, on pain of 20*l.*, to be recovered and mitigated as by the laws of excise, half to the king, and half to him that shall sue. *Note,* This section is omitted in Ruffhead's edition of the statutes.

Vid. Excise, title *Ale and Beer,* Vol. II. § V. 1. and stat. 56 *Geo.* 3. *c.* 58.

VI. Concerning Ale-vessels, and the Measure of Ale.

8 Eliz. c. 9. Justices to rate the price of vessels.

By stat. 8 *Eliz. c.* 9. The justices in *Easter* sessions yearly (and mayors in corporations) shall rate the price of all barrels, kilderkins, firkins, and other vessels to be sold for ale or beer to be uttered therein: And if any cooper shall not sell the same according to such rate, he shall forfeit 3*s.* 4*d.*; half to the king, and half to him that shall sue.

43 G. 3. c. 69. Barrel, what.

Stat. 43 *Geo.* 3. *c.* 69. § 12. which recites the 12 *C.* 2. *c.* 24. and 1 *W. st.* 1. *c.* 24., and which also recites that it is expedient that the quantities to be returned as a barrel of beer or ale, brewed by the common brewer, and the allowances for waste, should be in all places the same, enacts, that from 5th *July,* 1803, every 36 gallons of beer or ale brewed by common brewers, whether within or without the weekly bills of mortality, taken according to the standard of the ale quart, four to the gallon, shall be reckoned a barrel of beer or ale; and by § 14. no common brewers shall sell at any other rate the barrel.

11&12 W. 3. c. 15. Quarts and pints to be marked.

By 11 & 12 *W. c.* 15. [which is required to be given in charge at the sessions to the grand jury, § 9.] it is enacted, § 1., that " all innkeepers, alehouse-keepers, sutlers, victuallers, and other retailers of ale or beer, and every person and persons keeping any public-house, and retailing and selling ale or beer in any city, town corporate, borough, market town, village, hamlet, parish, part or place whatsoever, within the kingdom of *England,* dominion of *Wales,* or town of *Berwick-upon-Tweed,* shall retail, utter, and sell their ale and beer in and from their respective houses, by a full ale quart or ale pint, according to the standard of the exchequer, or in proportion thereunto, in a vessel made of wood, earth, glass, horn, leather, pewter, or of some other good and wholesome metal, made, sized, and equalled unto the said standard, and signed, stamped, or marked to be of the content of the

said ale quart or ale pint, according to the said standard, either from the said exchequer, or from the city of *London*, or from some city, town corporate, borough, or market-town where a standard ale quart or pint, made from the said standard, shall be kept for that purpose; and shall not retail and utter any ale or beer, to any person or persons, in any other vessel not signed and marked as aforesaid; on pain to forfeit a sum not exceeding 40*s*. nor less than 10*s*. for every such offence, " § 6. half to the poor the parish where such forfeiture shall be committed, and the other part to him that shall prosecute or sue for the same, to be recovered before one justice (P Q), by the oath of one witness, and to be levied by warrant of distress (R), rendering the overplus, deducting thereout the reasonable charges. — The prosecution to be within thirty days. (*a*)

11&12W. c.15.

§ 2. If any innkeeper, &c. shall sell in vessels not so signed, &c. or shall refuse to give an account of the particular number of quarts or pints for which demand is made, he shall be left to his action at law for the reckoning. (Vide post 73.)

§ 7. But it is not necessary that beer or ale sold, to be spent out of the house, be carried away in standard measures; it is sufficient if it be measured out by the standard.

3G.4. c.77. Alehouse-keeper to sell by standard measures.

Stat. 3 *G*.4. *c*.77. § 20. Enacts, " that from and after the 10th day of *October*, 1822, all persons keeping common inns, ale-houses, or victualling houses, and retailing ale and beer, shall sell the same in and from their houses by a full ale quart, pint, or half-pint, made of pewter, sized to the standard, and stamped or marked to be of due size according to the standard, either from the exchequer or from some city, town corporate, borough, or market town, where an ale quart, pint, or half-pint, made from the said standard, shall be kept for that purpose, and shall not retail any ale or beer in any other vessels than such stamped pewter ale quarts, pints, and half-pints, unless such ale or beer shall have been first measured in and by such stamped pewter ale quart, pint, or half-pint, in the presence of the guest or customer purchasing the same, under pain of forfeiting for every offence a sum not exceeding 40*s*. (together with the costs of conviction), to be recovered within 30 days next after the committing of such offence, before any two justices of the peace acting for the county or place in which such offence shall have been committed, the one half to be paid to the person who shall prosecute or sue for the same, and the other half to the poor of the parish or place where such offence shall have been committed; and in case of the non-payment thereof, they shall cause the same to be levied upon goods and chattels of the offender, by warrant of distress under their hands and seals."

Penalty not exceeding 40s. to be recovered before two justices.

Brewer to use casks of full size.

§ 21. Enacts, " that from and after the passing of this act, if any brewer or wholesale dealer in ale or beer, in that part of the U. K. called *England*, shall sell and deliver to any innkeeper, ale-house-keeper, victualler, or other person whomsoever, any ale or beer, in barrels, casks, or other vessels which shall not be able to contain the full quantity of ale or beer, for which the said brewer or wholesale dealer in ale or beer shall charge the purchaser thereof, such brewer or wholesale dealer in ale or beer shall forfeit

(*a*) Vide stat. 55 *Geo*.3. *c*.43. for preventing the use of deficient measures.

3 G.4. c.77. Penalty not exceeding *5l.* for each cask deficient in size.

and pay a sum not exceeding *5l.* for every such barrel, cask, or other vessel so deficient in size as aforesaid, together with the costs of conviction, to be recovered by information before one justice of the peace, within 30 days next after the making of such charge, who, in case of the non-payment thereof, shall cause the same to be levied upon the goods and chattels of the party so offending."

11&12 W.3. c.15. Who shall mark them.

By stat. 11&12 *W. c.*15. § 5. And every mayor, or chief officer of each city, town corporate, borough, or market town, shall, from time to time, on request to him made, cause or procure all ale quarts and ale pints, made of wood, earth, glass, horn, leather, pewter, or other good and wholesome metal, which shall be brought to him, to be measured, compared, sized, and equalled with the standard in his custody, and shall then cause the same, and every of them, to be plainly and apparently signed, stamped, and marked with W R and a crown, testifying that such ale quarts and ale pints respectively have been so measured, compared, sized, and equalled with such their standard as aforesaid; which stamps or marks the said mayor or chief officer are hereby respectively required to provide, and for which their stamping or marking they shall not demand or receive above one farthing for each measure, on pain of *5l.* to be recovered as aforesaid; and he shall also pay to the party grieved treble damages, with costs, by action at law.

Note. — Most of the books set forth that the sub-commissioners or collectors of excise shall procure standard quarts and pints out of the exchequer, for every market-town; but this was only required of them before *June* 24, 1700, and not since. § 3.

Indictment.

An indictment will lie for selling ale in pots unsealed, although the statute 11&12 *W.*3..*c.*15. appoints another method of proceeding; because measures are by the common law, and the statutes only direct the manner of ascertaining them. 2 *Blackerby*, 14.

But in such case the indictment must not be upon the statute, but at common law; and the offence ought to be laid, not for selling in pots unsealed, that being no offence at common law, but in pots wanting measure.

VII. Enhancing the Price of Ale.

2&3 Ed. *6. c.*15. Enhancing by conspiracy.

By stat. 2 & 3 *Ed.* 6. *c.* 15. If any brewers shall conspire to sell their victuals but at certain prices, they shall, on conviction in the sessions, or leet, by witness, confession, or otherwise, forfeit 10*l.* to the king for the first offence, and if not paid in six days, they shall be imprisoned twenty days; for the second offence 20*l.* in like manner; for the third offence 40*l.* in like manner, loss of an ear, and they become infamous.

2 G.3. c.14.

But by stat. 2 *Geo.* 3. *c.* 14. No brewer, innkeeper, victualler, or other retailer of strong beer or ale, shall be sued or molested by indictment, information, popular action, or otherwise, for advancing the price of strong beer or ale, in a reasonable degree.

VIII. Innkeepers obliged to receive Guests:—Harbouring Offenders against Revenue Laws.

Innkeepers are bound by law to receive guests who come to their inns, and are also bound to protect the property of those guests. They have no option either to receive or reject guests; and as they cannot refuse to receive guests, so neither can they impose unreasonable terms on them. *Per Ld. Kenyon* C. J., *Kirkman* v. *Shawcross*, 6 *T. R.* 17.

Inns, being intended for the lodging and receipt of travellers, may be indicted, suppressed, and the innkeepers fined, if they refuse to entertain a traveller without a very sufficient cause. 4 *Black. Com.* 167.

If one who keeps a common inn refuse either to receive a traveller as a guest into his house, or to find him victuals or lodging upon his tendering him a reasonable price for the same, he is not only liable to render damages for the injury, in an action on the case at the suit of the party grieved, but may also be indicted and fined at the suit of the king. 1 *Haw. c.* 78. §. 2.

Also it is said that he may be compelled by the constable of the town to receive and entertain such a person as his guest; and that it is no way material whether he hath a sign before his door or not, if he make it his common business to entertain passengers. But how the officer may compel him may be a question: It seemeth that all the officer can do, is either to cause such alehouse to be suppressed, or else to present such offence at the assizes or sessions, so that such offender may be thereupon indicted. *Dalt. c.* 7. See *Bull. N. P.* 73. 5 *T. R.* 273. 12 *Mod.* 445. *infra*, p. 76.

An innkeeper may also be compelled to receive a horse, although the owner do not lodge in his house; because by keeping the horse he has gain: but it would be otherwise of a trunk or other dead thing. *York* v. *Grindstone*, 1 *Salk.* 388.

9 G. 2. c. 35. Harbouring offenders against revenue laws.

By 9 *G.* 2. *c.* 35. § 30, 31. Any alehouse-keeper, knowingly receiving or harbouring an absconded person, against whom a process of arrest hath issued, and the sheriff has returned *non est inventus*, for having beat, abused, or obstructed any customs or excise officer in the execution of his office, or for any offence against the laws of excise or customs, or knowingly harbouring, &c. any person who, having been in prison for any such offence, has escaped, or who has been convicted for the same and shall fly from justice, after six days' notice of such absconding in two successive *Gazettes*, and by writing fixed on the door of the parish church where he last dwelt, shall forfeit 100*l.*, and have no license for the future.

IX. Soldiers quartered in Alehouses.

By the annual acts against mutiny and desertion, the constable, and in his default a justice of the peace, may quarter soldiers in inns, livery stables, alehouses, and victualling-houses; as is set forth more at large in title Military Law (*Soldiers*), Vol. III.

X. Persons guilty of tippling.

4 J. 1. c. 5. 21 J. 1. c. 7.

By stat. 4 *J.* 1. *c.* 5. § 4. and 21 *J.* 1. *c.* 7. § 2. If any person or persons shall remain or continue drinking or tippling in any inn,

Persons continuing drinking in alehouse, &c.

victualling-house, or alehouse, and the same being viewed and seen by any mayor or other head officer, or justice or justices of the peace within their several limits, or duly proved in such manner as is limited by stat. 1 *J.*1. *c.*9. (*i. e.* since 21 *J.*1. *c.*7. § 1, 2. by the oath of one witness, or voluntary confession of the party; and after such confession, his oath may be taken, and be sufficient proof against any other offending,) unless it be in such case or cases as be tolerated or excepted in 1 *J.*1. *c.*9. § 1.; (*viz.* labouring and handicraftsmen in cities and towns corporate and market towns, upon the usual working days, for one hour at dinner-time to take their diet in an alehouse; and labourers and workmen, which for the following of their work by the day or by the great, in any city, town corporate, market town, or village, shall, for the time of their said continuing in work there, sojourn, lodge, or victual in any inn, alehouse, or other victualling-house, other than for urgent and necessary occasions, to be allowed by two justices of peace;) every person or persons so offending shall forfeit for every such offence the sum of 3*s.* 4*d.* to the use of the poor of the parish where the said offence shall be committed, to be levied by distress. And if any offender or offenders be not able to pay the said forfeiture, it shall and may be lawful for any mayor, bailiff, or other head officer, justice or justices of the peace, where any such conviction shall be, to punish the said offender or offenders by setting him, her, or them in the stocks for every such offence by the space of four hours.

Persons excepted.

Penalty.

Distress.

Stocks.

Who shall present offences.

By stat. 4 *J.* 1. *c.* 5. § 7. and 21 *J.* 1. *c.* 7. § 5. All constables, churchwardens, headboroughs, tithingmen, aleconners, and sidemen, shall, in their several oaths incident to their several offices, be charged to present the said offences.

XI. Concerning Drunkenness.

Voluntary drunkenness no excuse.

He who is guilty of any crime whatever, through his voluntary drunkenness, shall be punished for it as much as if he had been sober. (*a*) 1 *Haw.* *c.* 1. § 6.

J. c.5.

Stat. 4 *J.* 1. *c.* 5. § 7. All constables, churchwardens, aleconners, and sidemen, shall be sworn to present the offence of drunkenness.

J. c.5.
J. c.7.
Penalty for the offence.

§ 2. And by stat. 21 *J.*1. *c.* 7. § 1. 3. Every person who shall be drunk, and thereof shall be convicted (T.U.W.) before one justice, or mayor, on view, confession, or oath of one witness, shall forfeit for the first offence 5*s.*, to be paid within one week after conviction to the churchwardens (X), who shall be accountable for the same to the use of the poor; and if he shall refuse or neglect to pay the same as aforesaid, it shall be levied by distress (Y); and if the offender be not able (Z) to pay the said sum of 5*s.* he shall be committed to the stocks (Aa), there to remain by the space of six hours.

c. 5.

By stat. 4 *J.* 1. *c.* 5. § 3. If any constable, or other inferior officer to whom that shall be given in charge by the precept of any mayor or justice, do neglect the due correction of the offender, or the due levying of the penalties where distress may be had,

(*a*) There was a law in Greece, "that he who committed a crime when drunk should receive a double punishment;" one for the crime itself, and the other for the ebriety which prompted him to commit it. 4 *Blac. Com.* 26.

every person so offending shall forfeit 10*s*., to be levied by distress by any other person having warrant from any mayor, bailiff, or other head officer, justice, or court, where any such conviction shall be, to be paid to the churchwardens, who shall account for the same, to the use of the poor where the offence shall be committed. — 4J. c.5.

§ 6. And by stat. 21 *J*. 1. *c*. 7. § 3. And any person upon a second conviction of drunkenness shall be bounden with two sureties in one recognizance or obligation of 10*l*., with condition to be from thenceforth of good behaviour. — Second offence. 4J. c.5. 21J. c.7.

To be of good behaviour.] Lord *Hale*, speaking of stat. 34 *Ed*. 3. *c*. 1. which gave justices power to bind malefactors to their good behaviour, generally, without any time limited, says, that it is not meant that the same shall be perpetual, but in the nature of bail, *viz*. to appear at such a day at their sessions, and in the mean time to be of good behaviour. 2 *Hale*, 136.

By stat. 4 *J*. 1. *c*. 5. § 11. But the offenders shall be convicted in six months. — 4J. c.5. In what time.

§ 8. Provides that this act shall not abridge the ecclesiastical jurisdiction.

§ 9. But when the offender hath been once punished by any the ways before mentioned, he shall not be punished again by any other ways or means. — None to be twice punished for the same offence.

Every person in H. M.'s pay in the navy, being guilty of drunkenness, shall incur such punishment as a court-martial shall think fit to impose. 22 *G*. 2. *c*. 33. *Art*. 2. *Navy*. — Navy.

XII. Detaining Goods for the Reckoning.

An innkeeper may detain the person of the guest who eats, or the horse which eats, till payment. And this he may do, without any agreement for that purpose. The law annexes such a condition without the express agreement of the parties; for it would be hard to oblige him to sue for every little debt; and a greater hardship, that he might not be able to find who was his guest. 3 *Bac. Abr*. 667. — General power of detaining.

Therefore, in trover for a horse in an innkeeper's hands, denial is no evidence of conversion, unless the plaintiff tender what the horse has eaten out; and the jury is to judge if sufficient were tendered. *Bull, N.P.* 45.

But an horse committed to an innkeeper may be detained only for his own meat, and not for the meat of the guest, or of any other horse; for the chattels in such case are only in the custody of the law for the debt that arises from the thing itself, and not for any other debt due from the same party; for the law is open for all such debts, and doth not admit private persons to take reprisals. 3 *Bac. Abr*. 668. 14 *Vin. Abr*. 438. 1 *Bulst*. 207. — Horse to be detained only for his own meat.

Also by stat. 11 & 12 *W*. 3. *c*. 15. § 2. If any innkeeper, alehouse-keeper, victualler, or sutler, in giving any account or reckoning in writing, or otherwise, shall refuse or deny to give in the particular number of quarts or pints for which demand is made, or shall sell in measures unmarked, it shall not be lawful for him, for default of payment of such reckoning, to detain any goods or other thing belonging to the person or persons — 11&12W.3. c.15. Reckoning to be in particulars; and vessels to be sealed.

11&12 W.3. c.15.

from whom such reckoning shall be due, but he shall be left to his action at law for the same; any custom or usage to the contrary notwithstanding.

Sales of spirits under 20*s.* value.

A plaintiff in an action for a tavern bill is not entitled to recover for any items under 20*s.* for spirits supplied to the guests, such sales being prohibited by stat. 24 *G.* 2. *c.* 40. *s.* 12. *Burnyeatt* v. *Hutchinson, M.* 2 *G.* 4. 5 *B.* & *A.* 241. See Vol. II. Excise, (*Spirits, Recovering Debts, &c.* § v. 15 *e.*)

Goods suffered to be taken away, not to be retaken.

In like manner, if the innkeeper give credit to the party for that time, and let him go without payment, then he hath waived the benefit of the custom, and must rely on his other agreement; for no person can in any case retain, where there is a special agreement, because then the other party is personally liable. *Jones* v. *Thurloe*, 8 *Mod.* 172.

An innkeeper may detain for his keep a horse left with him to be kept, though the persons who left him had no right to him, and though such persons did not stay in the inn; for leaving his horse at an inn makes a man a guest there. *Yorke* v. *Grenaugh*, 2 *Ld. Raym.* 866.

But an innkeeper cannot detain a horse for his keep, unless he were bound to receive the person who brought him as a guest; but he has a remedy upon the contract. S. C.

And if a man commit his horse to an innkeeper, and he put him to pasture, he may detain the horse until he be satisfied for the meat; for the pasture of such persons, set up by the law for entertainment, hath the same privilege with the stables. 2 *Roll. Abr.* 85.

Where a man desired the innkeeper to let his horse have no more food, it was held liable to a detainer notwithstanding. *Gilbert* v. *Berkeley, Skin.* 648. *pl.* 6.

If a horse committed to an innkeeper be detained by him for his meat, and the owner take him away, the innkeeper must make fresh pursuit after him, and retake him; otherwise the custody of him is lost, for he cannot retake him at any other time; for if a distress be rescued, and the party upon fresh pursuit do not retake it, the distress is lost. 2 *Roll. Rep.* 238.

But if a horse be committed to an hostler, who detains him for his meat, and afterwards the owner agree that he shall retain him till he be satisfied, here he hath not only the custody of him as a distress, but also the property in him as a pledge; and if the owner take it from him, he may not only retake it upon fresh pursuit, but wherever he meets it; because he had a property by such agreement, and a man that hath a property may retake his own wherever he meets it. 2 *Roll. Rep.* 238.

Goods seized not to be used.

An innkeeper that detains a horse for his meat cannot use him, because he detains him as in custody of the law: and by consequence the detention must be in the nature of a distress, which cannot be used by the distrainer. 3 *Bac. Abr.* 668.

Not to be sold, except by custom in London and Exeter.

But by the custom of *London* and *Exeter*, if a man commit an horse to an hostler, and he eat out the price of his head, the hostler may take him as his own, upon the reasonable appraisement of four of his neighbours; which was, it seems, a custom arising from the abundance of traffick with strangers, that could not be known, to charge them with the action. But the inn-

keeper hath no power to sell the horse, by the general custom of the realm. 3 *Bac. Abr.* 668. *Jones* v. *Thurloe*, 8 *Mod.* 172.

So in the case of *Jones* v. *Pearle*, 1 *Stra.* 557. In trover for three horses, the defendant pleaded that he kept a public inn at *Glastonbury*, and that the plaintiff was a carrier, and used to set up his horses there; and 36*l.* being due to him for keeping the horses, which was more than they were worth, he detained and sold them, as well he might: but on demurrer, judgment was given for the plaintiff, an innkeeper having no power to sell horses, except by special custom, as in the city of *London*. And besides, when the horses had been once out, the power of detaining them for what was due before did not subsist at their coming in again. *Jones* v. *Pearle*, 1 *Str.* 557.

Lien once parted with is gone for ever.

Thompson v. *Lacy*, *H.* 60 *G.* 3. and 1 *G.* 4. 3 *B.* & *A.* 283. A house of public entertainment in *London*, where beds, provisions, &c. are furnished for all persons paying for the same, but which was merely called a tavern and coffee-house, and was not frequented by stage-coaches and waggons from the country, and which had no stables belonging to it, is to be considered an inn, and the owner is subject to the liabilities of innkeepers, and has a lien on the goods of his guest for the payment of his bill, and that even where the guest did not appear to have been a traveller, but one who had previously resided in furnished lodgings in *London*.

XIII. Goods of a Guest stolen out of an Inn.

Innkeepers answerable for goods stolen.

Inns were allowed for the benefit of travellers, who have certain privileges whilst they are in their journeys, and are in a more peculiar manner protected by the law. The law obliges an innkeeper to keep the goods of persons coming to his inn, *causâ hospitandi*, safely, so that *pro defectu hospitatoris hospitibus damnum non eveniat ullô modo*. *Per Ld. Ellenborough* C. J., 4 *M.* & *S.* 310.

And although the guest doth not deliver his goods to the innholder to keep, nor acquaints him with them, yet if they be stolen, the innkeeper shall be charged. *Calye's Case*, 8 *Rep.* 33.

If a man comes to an inn and delivers his horse to the hostler, and requires him to be put to pasture, which is done accordingly, and the horse is stolen, the innholder shall not answer for it. *Calye's Case*, 8 *Rep.* 32.

If an innkeeper bid his guest take the key of his chamber and lock the door, and tell him that he will not take the charge of the goods, yet if they be stolen he shall be answerable, because he is charged by law for all things which come to his inn; and he cannot discharge himself by such or the like words. *Dalt.* c. 56. *Blackerby*, 169.

But if there be evidence that the guest accepted the key, and took on himself the care of his goods, it is for the jury to determine whether this evidence of his receiving the key proves that he did it *animo custodiendi*, and with a purpose of exempting the innkeeper, or whether he took it merely because the landlord forced it on him, or for the sake of securing greater privacy, in order to prevent persons from intruding themselves into his room. *Per Ld. Ellenborough* C. J., *Burgess* v. *Clements*, 4 *M.* & *S.* 310, 311.

The cases shew, that the rule is not so inveterate against the innkeeper, but that the guest may exonerate him by his fault; as if the goods are carried away by the guest's servant or companion whom he brings with him. For thus it is laid down in *Calye's Case*, 8 *Rep*. 33. "that if the servant of the guest, or he who comes with him, or he whom he desires to be lodged with him, steal or carry away the goods, the innkeeper shall not be charged; for there the fault is in the guest to have such companion or servant;" which shews that for such damage as is occasioned by the misconduct of the guest, he shall not be entitled to complain, or to have any recompence. *Per Ld. Ellenborough* C.J., *S. C.*

So, where the plaintiff's servant came to the inn, and desired to have the liberty of leaving the goods, which he could not dispose of in the market, until the next week, which proposal was rejected, whereupon he sat down in the inn as a guest, with the goods behind him, and, during the time, the goods were taken away; it was held, that although his request was not complied with, he was entitled to protection for his goods during the time he continued in the inn as a guest. *Bennet* v. *Mellor*, 5 *T. R.* 273.

It is clear that the goods need not be in the special keeping of the innkeeper in order to make him liable; if they be at the inn, that is sufficient to charge him. *Per Buller* J., *S. C.*

But an innkeeper is bound to answer for those things only that are *infra hospitium*. If, therefore, he refuse, because his house is full, to receive a person, who thereupon says he will shift, and then is robbed, the host shall not be charged: but without such cause he cannot discharge himself by words only. *Bull. N. P.* 73.

If an innkeeper say his house is full, and refuse to take in the guest, it is a good excuse; and if false, the innkeeper is liable to an action for refusing to take in the guest. *Per Buller* J., *Bennet* v. *Mellor*, 5 *T. R.* 273.

An indictment against an innkeeper for not receiving a sick person, must state that he was a traveller. *Rex* v. *Luellin*, 12 *Mod*. 445.

Who shall be deemed a guest in this respect.

Holt C. J. doubted whether a man is a guest by setting up his horse at an inn, though he never went into the inn himself; but the other three justices held that such person is a guest by leaving his horse, as much as if he had staid himself, because the horse must be fed, by which the innkeeper has gain; otherwise, if he had left a trunk, or a dead thing. *York* v. *Grindstone*. 1 *Salk*. 388.

So if a man come to an inn with a hamper, in which he hath certain goods, (to wit, hats, as the case was,) and depart leaving it with the host, and two days after come again, and in the time of his absence this was stolen; he shall not have any action against the host, because he was not a guest at the time of the stealing, and the host had no benefit by the keeping thereof, and therefore shall not be charged for the loss thereof in his absence. 1 *Roll. Abr.* 2.

If one come to an inn, and make a previous contract for lodging for a set time, and do not eat or drink there, he is no guest, but a lodger, and so not under the innkeeper's protection: but if he eat and drink, or pay for his diet there, it is otherwise. *Parker* v. *Flint*, 12 *Mod*. 255.

So, if an attorney hire a chamber in an inn for a whole term, the host is not chargeable with any robbery in it, because the party is, as it were, a lessee. *Mo.* 877.

An innkeeper is not bound to find any more than convenient lodging-rooms and lodging for his guests. Therefore, where a person, originally coming as a guest, applied for a room for the purpose of exhibiting goods for sale, the use of which was granted to him by the innkeeper's wife, who at the same time told him, that there was a key in the door, and that he might lock it, (which was equivalent to telling him that he must take charge of it,) but which he neglected to do, and during the night a part of the goods were stolen; it was held that the innkeeper was not responsible. — *Bayley* J. observed, that "to hold in such a case that the defendant is liable, would be to make him liable not for his own negligence but the negligence of his guest; for grosser negligence can hardly be stated; and it would be to enable the plaintiff to take advantage of his own negligence, which has been the sole cause of the loss." *Burgess* v. *Clements*, 4 *M.* & *S.* 306.

If a guest take upon himself the exclusive charge of the goods which he brings into the house of an innkeeper, he cannot afterwards charge the innkeeper with the loss. A landlord is not bound to furnish a shop to every guest who comes into his house; and if a guest takes exclusive possession of a room, which he uses as a warehouse or shop, he discharges the landlord from his common law liability. *Per Le Blanc* J., *Farnwall and another* v. *Packwood, York Spring Ass.* 1816. 1 *Stark. N. P.* 247. *Curtin* v. *Packwood, Holt's Rep.* 209.

An innkeeper, though licensed to let post horses, is not liable to an action for refusing to furnish them to a traveller, though he have a chaise and horses at liberty at the time of the application, and though a reasonable price be tendered to him for the hire. *Dicas* v. *Hides, York Spring Ass.* 1816. *cor. Le Blanc* J., 1 *Stark. N. P.* 247. 1 *Holt's Rep.* 207. But if he does hire it, and the passenger takes his seat in it, the postmaster must proceed, if his fare is tendered. *Massiter* v. *Cooper*, 4 *Esp. C. N. P.* 260. *cor. Lord Ellenborough.*

Soldiers billeted are guests. *Clayt.* 97. In *Com. Dig. tit. Action on the case for negligence* (B), it is said they must be quartered fourteen days.

XIV. Guests stealing Goods.

A guest in a common inn, rising in the night-time, and carrying goods out of his chamber into another room, and from thence to the stable, intending to ride away with them, is guilty of felony: for the least removal of the thing taken from the place where it was before is a sufficient asportation for this purpose. *Dalt. c.* 40. § 87. 1 *Haw. c.* 33. § 18. See *tit.* Larceny, Vol. III.

[NOTE. The universities are generally excepted out of these acts concerning alehouses:] and by stat. 5 *G.* 4. *c.* 54. § 6., within the limits of the universities of *Cambridge* and *Oxford*, all persons applying for licences authorising the retail sale of beer, subject to the provisions of that act, shall apply to the persons heretofore granting common ale licences, who may grant the same in the same manner and according to the same rules and usages by which they have been accustomed to grant the last mentioned licences.

5 G.4. c.54.

XV. Recovery and application of Penalties.

3G.4. c. 77.

By stat. 3 *G*.4. *c*.77. § 18. No justice personally interested is to convict or to join in any conviction under this act. Vide § 18. *ante*, *p*. 42.

Justices may proceed in a summary way.

§ 12. Enacts, "that it shall and may be lawful to and for two justices of the peace for the time being of the county or place where any of the offences against this act, for the commission of which pecuniary penalties are imposed, shall be committed, to hear and determine the same offences in a summary way, which same justices of the peace are hereby authorized and required, upon any information (I. *a*) exhibited or complaint made in that behalf to or before them, to (II.) summon the party or parties accused, and also the witnessess on either side, (if they shall be required to summon any such witnesses), and upon the appearance, or contempt of the party or parties accused by not appearing, to proceed to examine and hear the matter in a summary way, and also to examine such witnessess upon oath as shall be produced therein, (which oath the said justices are hereby empowered to give and administer), and to give their judgment thereon; and in case they shall convict the party or parties so accused or complained against of the offence laid to his, her, or their charge, and such party or parties so convicted shall refuse or neglect to pay the penalty or penalties for which he, she, or they shall stand convicted within the time herein-before mentioned for that purpose, together with the costs of such conviction or convictions, to be assessed, settled, and ascertained as aforesaid, that then and in every such case it shall and may be lawful for such justices, and they are hereby authorized and required to issue their warrant (*a*) or warrants under their hands and seals for the apprehending and committing to the common gaol or house of correction as aforesaid every such offender, for such time and in such manner as the nature of the offence shall require, according to the provisions aforesaid, and the true intent and meaning of this act."

Persons convicted to be committed for nonpayment of penalties.

Penalty on witnesses not attending when summoned.

§ 13. Enacts, "that if any person or persons shall be summoned as a witness or witnesses to give evidence before any such justices of the peace touching any of the matters aforesaid, either on the part of the prosecutor or of the person or persons accused, and shall neglect or refuse to appear at the time and place to be for that purpose appointed, without a reasonable excuse for such his, her, or their neglect or refusal, to be allowed of by such justices of the peace, or appearing shall refuse to be examined on oath and give evidence before such justices of the peace before whom the prosecution shall be depending, that then every such person shall forfeit for every such offence the sum of 40*s*., to be levied and paid in such manner and by such means as are herein-before directed as to other pecuniary penalties."(*a*)

Securities may be given and taken for the payment of penalties.

§ 14. Enacts, "that if any person or persons shall think himself, herself, or themselves aggrieved by the judgment or conviction of any justices of the peace for any of the offences aforesaid, for the commission of which a pecuniary penalty is annexed, and shall give security (*a*) to the satisfaction of such justices of the

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(*a*) See Forms I. to VIII. *infra*, § XV.

peace for the payment of the penalty, costs, and expenses to be expressed in the said conviction, within twenty-four hours after the same shall be made, that then and in every such case after such security given, and not otherwise, it shall and may be lawful to and for such offender or offenders to appeal from and against such conviction or convictions to the justices of the peace assembled at the next general or quarter sessions of the peace to be held for such county, riding, division, liberty, city, town, or place, unless such sessions of the peace shall be held within six days or less next after such conviction or convictions shall be so had or made, and in that case to the justices of the peace to be assembled at the next sessions after such first-mentioned sessions, and not afterwards; and that the justices of the peace assembled at such sessions shall thereupon proceed to hear and determine the matter of every such appeal, and their judgment thereon shall be final and conclusive to all intents and purposes whatsoever; and the justices of the peace so assembled at such sessions are hereby authorized and required to award such costs as to them shall appear just and reasonable to be paid by either party, not exceeding in the whole the sum of 5*l.* on any one appeal."

3 G.4. c.77.

Appeal.

By § 15. In order to prevent frivolous and vexatious appeals, it is enacted, that a conviction in the form or to the effect following, *mutatis mutandis*, (as the case shall happen to be), shall be good and effectual to all intents and purposes whatsoever, without stating the case, or the facts or evidence in any more particular manner; (that is to say,)

For preventing vexations appeals.

Middlesex } *BE it remembered, That on this* ——— *day of* ——— *in the year* ——— A. B. *of* ——— *was duly convicted before us,* C. D. *and* E. F., *two of his majesty's justices of the peace for the county or city of* ——— *of an offence against the condition of a recognizance entered into by the said* A. B. *on* ——— *obtaining a licence to sell ale, beer or other excisable liquors by retail, whereby he, she, or they has or have forfeited the sum of* ——— *this being the first* [or, *second offence*, as the case shall happen to be] *besides the costs and expenses of this conviction, which costs and expenses we, the said justices of the peace, do hereby ascertain and assess at the sum of* ——— *pursuant to the statute in such case made and provided. Given under our hands and seals the day and year above written.*

Form of conviction.

§ 16. Enacts, "that on every such conviction so to be had or made as aforesaid, the justices of the peace before whom the same shall be made, shall return the same to the next quarter sessions of the peace to be holden for such county, riding, division, liberty, city, town-corporate, or place, and the record of such conviction shall, unless the same shall be afterwards quashed on appeal as herein-before directed, be evidence against the party thereby convicted in any prosecution to be instituted against him, or her or them, for a third or other offence, in the nature of a third offence, constituting or to constitute a breach of the condition of his, her, or their recognizance entered into on obtaining a licence as herein-before directed; and the several clerks of the peace to whom such convictions shall be returned, shall immediately on such return make, or cause to be made, a memorandum or entry of such conviction in the calendar or register to be kept by them, of

Convictions to be registered and stated as to being the first, second, or third offence.

3 G.4. c.77.

the names and places of abode of the several persons so licensed as aforesaid, and shall in such entry state whether such conviction be the first, or second, or other subsequent conviction of the offending party."

Application of penalties.

§ 22. "All fines, penalties, and forfeitures imposed by this act, and for which no other means for recovering thereof are hereby provided, may be sued for and recovered by action of debt, bill, plaint, or information, in any of H. M.'s courts of Record at *Westminster;* and one moiety of all and every fine, penalty, or forfeiture by this act imposed, and not expressly directed to be otherwise applied, shall be to H. M., his heirs and successors, and the other moiety to him or them who shall inform, discover, or sue for the same."

A.

A. Precept to the High Constable to issue Warrants to the Petty Constables, to summon Alehouse-keepers to be licensed; on stats. 5 & 6 *Ed.*6. *c.*25. 2 *G.* 2. *c.* 28. 26 *G.* 2. *c.*31. § 4. 3 *G.* 4. *c.* 77.

County of ——— } To *J. B.*, gentleman, high constable of the hundred or division of ——— within the said county.

IN pursuance of the statutes in that case made, these are to require you, on sight hereof, to issue out your warrants to all petty constables belonging to the several constablewicks within your said ward, in the form, or to the effect hereon indorsed. Given under our hands and seals the ——— day of———.

J. P.
K. P.

B.

B. Form of the High Constable's Warrant as above directed:

County of ——, }
Hundred of —— } To the constables of the parish of ——

BY virtue of a warrant from his majesty's justices of the peace acting within the said hundred to me directed, you are hereby required to give notice to all licensed innkeepers and alehouse-keepers within your constablewick, and also to all persons unlicensed (so far as the same shall come to your knowledge) who do intend to offer themselves to be licensed at the next general meeting of the said justices for that purpose, that they do personally appear before the said justices at ——— on the ——— day of September *next, at the hour of ——— in the forenoon of the same day, to take or renew their licences for the year ensuing; and also to give them notice. that every person then and there to be licensed must personally enter into a recognizance in the sum of* 30*l.*, *together with two sureties in* 10*l. each, or one surety in* 20*l.*, *that they will not use or suffer any unlawful games, and that they will keep good order and rule within their respective houses and other places: and if any shall be hindered by sickness, or other reasonable cause to be allowed by the said justices, that he must procure two sureties then and there to be bound in like manner in* 30*l. each.*

And unto such persons as have not been licensed for the year preceding, you are further to give notice, that no license will be granted to any of them, unless he (or she) shall also, at the same time and place, produce a certificate under the hands of the minister, or of

the major part of the churchwardens and overseers, and of four reputable and substantial householders and inhabitants, or under the hands of eight respectable and substantial householders and inhabitants of the parish or place where he [or *she*] *shall have last inhabited or dwelt, for a space of six months, setting forth the number of the house, and the name of the street, or other true description of the house where he* [or *she*] *so dwelt, and also whether he* [or *she*] *was there a housekeeper or an inmate, and whether in such last-mentioned parish or place he* [or *she*] *kept an alehouse or victualling-house, and if so, the sign of such houses, setting forth that he* [or *she*] *is of good fame, sober life and conversation, and a fit and proper person to be entrusted with a licence to keep a common inn, alehouse, or victualling house.* (a)

And unto such persons whose houses shall not have been used for such purposes by virtue of a licence granted at a preceding general annual meeting of the justices, and who (as far as the same shall come to your knowledge) do intend to apply to be licensed for the purposes aforesaid, you are further to give notice, that no licence will be granted to any of them, unless he [or *she*] *shall also have given notice in writing to the clerk or clerks to the justices at such general meeting, three calendar months prior to the general annual meeting of the justices of the peace for granting licences for the place in which the house shall be situated, for which such licence shall be applied for, and shall have affixed, or caused to be affixed, three copies of such notice, written in a fair and legible hand, on the principal door or most conspicuous part of the house for which such licence is intended to be applied for, and on the door of the church of the parish in which such house shall be situated, on three several days within the months of* May *or* June, *between the hours of ten of the clock in the forenoon, and of four of the clock in the afternoon, and between each of which days of affixing such notices, the space of seven days shall elapse, which notice, and the copies thereof so to have been affixed, shall have been signed by the party interested in such house, and intending to make such application as aforesaid, or his, her, or their agent thereunto authorised; and which notice should have stated and set forth the situation of the said house in a true and particular manner, together with the rate of building thereof, where any such rate of building exists or is prescribed, and the name, place of abode, and description of the party so applying, and also the name and place of abode of the person proposed to be licensed therein.* (b)

And you are to make a return to the said justices, at the same time and place, in writing under your hand, containing the names of all such persons as you shall have summoned so to appear before them as aforesaid, together with their dwelling-places, and the signs by which their houses are known.

You will, moreover, inform the overseers of the poor and the surveyors of the highways, as well as all those justices of the peace who reside in your parish, of the time and place appointed for the said sessions. Hereof fail not. Given under my hand at ——— in the

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(a) See 3 *G*.4. *c*.77. §2. *ante*, p. 40., and Form of Certificate, *post*. 82.
(b) See 3 *G*.4. *c*.77. §17. *ante*, p. 42., and Form of Notice, *post*. 83.

said county, the ——— day of ——— in the year of our Lord one thousand eight hundred and ———.

——— { *High constable.*

C.

C. Form of Certificate of good conduct of a person applying for a licence to keep a common inn, alehouse, or victualling house, pursuant to stat. 3 *G.*4. *c.*77. § 2.

WE whose names are hereunto subscribed, being the Parson [or *Vicar*, or *Curate*, or *the major part of the Churchwardens, Chapelwardens, and Overseers of the Poor,*] *and four reputable and substantial householders and inhabitants,*(a) [or, *eight respectable and substantial householders and inhabitants*, as the case may be] *of the* ——— *of* ——— *in the County of* ——— *do hereby certify that* A. B. *hath last inhabited and dwelt for the space of six months and upwards in the said* ——— *of* ——— [here insert the true description of the house] *; that he was a housekeeper* [or, *an inmate*], *and kept a private house* [or, as the case may be ; if an alehouse, state the sign,] *there ; and that he is a person of good fame, sober life and conversation, and a fit and proper person to be entrusted with a licence to sell ale, beer, or other exciseable liquors by retail.*

Witness our hands this ——— *day of* ——— 18—

Note.—This certificate is also required to be produced by the executors or assignees of a licensed person, who apply to two or more justices for a licence to continue the house open till the next 10th October. See 3 *G.*4. *c.*77. § 6. *ante*, p. 54. and observations thereon, p. 56.

D.

D. — Form of Licence to keep an alehouse prescribed by stat. 3 *G.* 4. *c.* 77. schedule B.(b)

AT a general meeting of his majesty's justices of the peace, acting in and for the ——— *division in the county of* ———, *holden at* ——— *within the said division, on the* ——— *day of* ——— *one thousand eight hundred and* ———, *for the purpose of authorising and empowering persons to keep common inns, alehouses, or victualling-houses, we, being* ——— *of his majesty's justices of the peace acting in and for the said division and county, assembled at the said meeting, do hereby authorise and empower* ——— *at the sign of the* ——— *in* ——— *in the division and county aforesaid* ——— *having produced the certificate required by law to keep a common inn, alehouse, or victualling-house, and to utter and sell in the said house wherein* ——— *now dwelleth, called or known by the sign of the* ——— *and in the premises thereunto belonging, and not elsewhere, victuals, and all such exciseable liquors as* ——— *shall be licensed and empowered to sell, under the authority and permission of any excise licence, which shall be duly granted by the commissioners of excise, or persons to be appointed or employed by*

(a) Not less than four: and if the certificate is signed by householders *only*, it must be so stated, and they must be not less than eight in number, 3 *G.*4. *c.*77. § 2.

(b) By stat. 3 *G.*4. *c.*77. § 1. every licence granted by justices of the peace or magistrates, after the passing of the act, viz. 26th *July*, 1822 hall be in this form.

them for that purpose; provided that the true assize in bread, beer, ale, cyder, and all other liquors, be duly kept; and that the said ——— do not fraudulently dilute or adulterate the same, or sell the same knowing them to have been fraudulently diluted or adulterated, and do not use, in uttering and selling thereof, any pots or other measures that are not of full size, and do not wilfully or knowingly permit drunkenness or tippling, or get drunk in ——— house, or other premises, nor knowingly suffer any gaming with cards, draughts, dice, bagatelle, or any other sedentary game, in ——— house, or any of the outhouses, appurtenances, or easements thereto belonging, by journeymen, labourers, servants, or apprentices; nor knowingly introduce, permit, or suffer any bull, bear, or badger-baiting, cock-fighting, or other such sport or amusement, in any part of ——— premises; nor shall knowingly and designedly, and with a view to harbour and entertain such, permit or suffer men or women of notoriously bad fame, or dissolute girls and boys, to assemble and meet together in ——— house, or any of the premises thereto belonging; nor shall keep open ——— house, nor permit or suffer any drinking or tippling in any part of ——— premises, during the hours of divine service on Sundays; *nor shall keep open ——— house or other premises during late hours of the night or early in the morning, for any other purpose than the reception of travellers, but that good order and rule be maintained and kept therein; the authority and power hereby granted to continue in force for one whole year, from the tenth day of* October *next, and no longer.*

Signed {

E. Form of notice to be given to the clerk or clerks to the justices of intended application for a licence or authority to keep a common inn, alehouse, or victualling-house, pursuant to stat. 3 G.4. *c.*77. § 17. **E.**

To Mr. A. B. [or to A. B. and C. D. as the case may be,] ——— Clerk [or, Clerks] to his Majesty's Justices of the Peace, acting in and for the division [or, liberty, &c. as the case may be,] of ——— in the county of ———.

I, E. F. ——— *of* ——— *in the* ——— *of* ——— *in the County of* ——— [insert the description of the party applying], *do hereby give you notice, that I intend to apply to his majesty's justices of the peace, acting in and for the division* [or, *liberty, &c.*] *of* ——— *in the said county of* ——— *at their next general annual meeting for granting licences for the said division* [or, *liberty, &c.*] *for a licence or authority to sell ale, beer, cyder, perry, or other exciseable liquors by retail in the house and premises thereto belonging, now in my own occupation* [or, *now,* or *late in the occupation of* ——— as the case may be], *situate at* ——— *in the* ——— *of* ——— *in the said division,* [or, *liberty, &c.*] *the said house being* ——— [insert here the particular rate of building, if any exists or is prescribed] *pursuant to the statute in such case made and provided.*

Given under my hand this ——— *day of* ——— *in the year of our Lord one thousand eight hundred and* ———,

E. F.

N. B.—This Notice should bear date, and be served, three calendar months prior to the general annual meeting of the justices in the month of September, and three copies thereof affixed on the principal door or most conspicuous part of the house for which such licence is intended to be applied for, and on the door of the church of the parish in which such house shall be situated, on three several days within the months of May or June, between the hours of ten of the clock in the forenoon, and of four of the clock in the afternoon, and between each of which days of affixing such notices, the space of seven days shall elapse; which Notice, and the copies thereof so to be affixed, shall be signed by the party interested in such house, and intending to make such application as aforesaid, or his, her, or their agent thereunto authorized.

F.

F. Form of recognizance of an alehouse keeper prescribed by stat. 3 G.4. c.77. sch. A.

Middlesex. } *AT a ——— meeting of his majesty's justices of the peace acting in and for the division* [or, *liberty, &c.* as the case may be,] *held at ——— in the division* [or, *liberty, &c.*] *and county aforesaid, on ——— the ——— day of ——— one thousand eight hundred and ———*, T. S. *at the sign of, &c. victualler, acknowledges himself to be indebted to our sovereign lord the king, in the sum of ——— pounds,* E. F. *of, &c. acknowledges himself to be indebted to our sovereign lord the king, in the sum of ——— pounds, to be levied upon their several goods and chattels, lands and tenements, by way of recognizance, to his majesty's use, his heirs and successors, upon condition that the said* T. S. *do and shall keep the true assize in uttering and selling bread and other victuals, beer, ale, and other liquors in his*, her, or their house, and shall not fraudulently dilute or adulterate the same, and shall not use, in uttering and selling thereof, any pots or other measures that are not of full size, and shall not wilfully or knowingly permit drunkenness or tippling, nor get drunk in his, her, or their house or other premises; nor knowingly suffer any gaming with cards, draughts, dice, bagatelle, or any other sedentary game in his, her, or their house, or any of the outhouses, appurtenances, or easements thereto belonging, by journeymen, labourers, servants, or apprentices; nor knowingly introduce, permit, or suffer any bull, bear, or badger-baiting, cock-fighting, or other such sport or amusement in any part of his, her, or their premises; nor shall knowingly or designedly, and with a view to harbour and entertain such, permit or suffer men or women of notoriously bad fame, or dissolute girls and boys to assemble and meet together in his, her, or their house, or any of the premises thereto belonging; nor shall keep open his, her, or their house, nor permit or suffer any drinking or tippling in any part of his, her, or their premises during the usual hours of divine service on* Sundays; *nor shall keep open his, her, or their house or other premises during late hours of the night or early in the morning, for any other purpose than the reception of travellers, but do keep good rule and order therein according to the purport of a licence granted for selling ale, beer, or other liquors by retail in the said house and premises for one whole year, com-*

* Sic.

mencing on the tenth day of October *next; then this recognizance to be void, or else to remain in full force.*

Taken and acknowledged the day and year above written before us,

J. P.

K. P. (a)

G. Form of Assignment, to be indorsed upon the back of the Excise Licence. G.

County of — } *I the within-named* A. B. *do hereby assign this*
Hundred of — } *licence and all my interest therein to* J. D. *of* ——— *in the said county of* ———. *Witness my hand this* ——— *day of* ——— *one thousand eight hundred and* ———.

Witness, A. B
A. W.

H. Licence granted at a special meeting. H.

AT a special meeting of his majesty's justices of the peace acting in and for the ——— *division of the hundred of* ——— *in the county of* ———, *holden at* ———, *within and for the said division on the* ——— *day of* ——— *one thousand eight hundred and* ———, *for the purpose of authorising and empowering persons to open or continue open, in certain cases, common inns, alehouses, or victualling-houses.*

It having been duly made to appear that at the last general *meeting holden within the said division, for the purpose of authorising and empowering persons to keep common inns, alehouses, or victualling-houses within the said* ——— *division, &c.,* A. B., *of* ———, [in cases of death, add *since dead,*] *was authorised and empowered, at the sign of the* ———, *in the parish of* ———, *in the division and county aforesaid, to keep a common inn, alehouse, or victualling-house, and to utter and sell in the said house wherein he then dwelt, called or known by the sign of the* ———, *and in the premises thereunto belonging, and not elsewhere, victuals, and all such exciseable liquors as he* [or *she,* as the case may be,] *should be licensed and empowered to sell under the authority and permission of any excise licence which should be duly granted by the commissioners of excise, or persons to be appointed or employed by them for that purpose; and that the said* A. B. *hath been* [in case of death, *was*] *duly licensed and empowered to sell certain exciseable liquors under such authority and permission;* and also *that the said* A. B. *died on or about the* ——— *day of* ——— [or, *hath removed from the said house,* or, *hath yielded up the possession of the said house to* C. D., or, *house hath become unoccupied,* as the case may be.]

And that the excise licence granted to the said A. B. *hath been duly assigned to the said* C. D.

(a) This recognizance must also be entered into by the executors or assignees of a licensed person who apply to two or more justices for a licence to continue the house open till the next 10th *October*. See 3 *G.4. c.77.* § 6. *ante,* p. 54. and observations thereon, p. 56.

We being two of his majesty's justices of the peace acting in and for the said division and county, assembled at the said special meeting, do hereby authorise and empower the said C. D. *(he having produced the certificate required by law) to continue open the said house as an alehouse or victualling-house, and to utter and sell therein, and in the premises thereunto belonging, and not elsewhere, victuals and all such exciseable liquors as the said* A. B. *hath been* [in case of death, *was*] *licensed and empowered to sell under the authority and permission of such excise licence granted and assigned as aforesaid. Provided that the true assize in bread, beer, ale, cyder, and all other liquors be duly kept, and that the said* C. D. *do not fraudulently dilute or adulterate the same, or sell the same knowing them to have been fraudulently diluted or adulterated; and do not use in uttering and selling thereof any pots or other measures that are not of full size; and do not wilfully or knowingly permit drunkenness or tippling, or get drunk in his house or other premises; nor knowingly suffer any gaming with cards, draughts, dice, bagatelle, or any other sedentary game, in his house, or any of the outhouses, appurtenances, or easements thereto belonging, by journeymen, labourers, servants, or apprentices; nor knowingly introduce, permit, or suffer any bull, bear, or badger-baiting, cock-fighting, or other such sport or amusement, in any part of his premises; nor shall knowingly and designedly, and with a view to harbour and entertain such, permit or suffer men or women of notoriously bad fame, or dissolute girls and boys to assemble and meet together in his house, or any of the premises thereto belonging, nor shall keep open his house, nor permit or suffer any drinking or tippling in any part of his premises during the hours of divine service on* Sundays, *nor shall keep open his house or other premises during late hours of the night, or early in the morning, for any other purpose than the reception of travellers, but that good order and rule be maintained and kept therein. The authority and power hereby granted to continue in force until the* 10*th day of* October *next, and no longer.*

Signed E. F.
G. H.

I. Information for selling Ale without a Magistrate's Licence; on stat. 35 *Geo*.3. *c*.113.

County of ——— } *BE it remembered, that on the ——— day of ——— in the ——— year of the reign of our sovereign lord* George *the third, by the grace of God, &c. and in the year of our Lord ———, at ——— in the said county of ———,* A. I. *of ——— in the county of ———, gentleman, who prosecutes as well for the poor of the parish of ——— in the said county of ——— as for himself, in this behalf, in his proper person, cometh before me* I. P. *esquire, one of the justices of our said lord the king, assigned to keep the peace of our said lord the king, in and for the said county of ———, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, and as well for the poor of the said parish of ——— in the said county of ——— as for himself, giveth me the said justice to understand and be informed, that after the 20th day of* September 1795, *and within six months next before the day of exhibiting the said information, to wit,*

on the ——— day of ——— in the year of our Lord one thousand eight hundred and ———, at the parish of ——— in the said county of ———, one A.O. *of the parish of ——— in the county of ——— yeoman, did sell ale,* [or *beer,* or any other exciseable liquors; particularizing which of them as the case shall happen to be,] *by retail in the house* [or other place, as it may be,] *of him the said* A. O. *situate, standing, and being in the said parish of ——— in the said county of ———, without being licensed thereto, according to law; whereby, and by force of the statute in such case made and provided, the said* A. O. *hath forfeited for his said offence the sum of 20l., and also the costs and expenses attending the convicting the said* A. O. *of the said offence, one moiety of the said penalty of 20l. to him the said* A. I., *and the other moiety thereof to the use of the poor of the said parish of ——— (being the parish in which the said offence was committed); and that* A. W. *of the parish of ——— in the county of ——— yeoman, is a material witness to be examined concerning the premises: and the said* A. I. *who prosecutes as aforesaid, prayeth that the said* A. O. *may be convicted of the said offence, and that one moiety of the said penalty of 20l. may be adjudged to him the said* A. I. *and the other moiety thereof to the use of the poor of the said parish of ——— according to the form of the statute in such case made and provided; and that the said* A. O. *may be summoned to answer the said information, and make his defence thereto, and the said* A.W. *to testify his knowledge therein, before me the justice aforesaid.*

K. Summons thereupon. K.

County of ——— } To A. O. and to the constable of ——— in the said county.

WHEREAS an information hath been this day exhibited by A. I. *of ——— in the county of ——— gentleman, who prosecutes as well for the poor of the parish of ——— as for himself, in this behalf, before me* I. P. *esquire, one of the justices of our lord the king assigned to keep the peace of our said lord the king, in and for the said county of ———, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, setting forth, that after the 20th day of* September, 1795, *and within six months next before the day of exhibiting the said information, to wit, on the ——— day of ——— in the year of our Lord ———, at the parish of ——— in the said county of ———, you* A. O. *of the parish of ——— in the county of ——— yeoman, did sell ale,* [or *beer,* or any other exciseable liquors; particularizing which of them, as the case shall happen to be], *by retail, in the house* [or other place, as it may be], *of you the said* A. O. *situate, standing and being in the said parish of ——— in the said county of ———, without being licensed thereto according to law; whereby, and by force of the statute in such case made and provided, you the said* A. O. *have forfeited for your said offence the sum of 20l. and also the costs and expences attending the convicting you thereof, one moiety of the said penalty of 20l. to him the said* A. I. *and the other moiety thereof to the use of the poor of the said parish of ——— (being the parish in which the said offence was committed,) and praying that you the said* A. O. *may be convicted of the said offence, and that one moiety of the said penalty of 20l. may be adjudged to him*

the said A. I. *and the other moiety thereof to the use of the poor of the said parish of* ———, *according to the form of the statute in such case made and provided: These are therefore to require you the said* A. O. *to appear before me on the* ——— *day of* ——— *next ensuing, at the hour of* ——— *in the forenoon of the same day, at the house of* ——— *situate in* ——— *in the said county of* ———, *to answer the matter of complaint contained in the said information, and to shew cause, if any you have, why you should not be convicted of the said offence charged in the said information; and I do authorise you the said* A. C. *to serve this my summons, and do require you the said* A. C. *to attend me at the time and place last above-mentioned, then and there to make a return to me of the execution of this my summons. Herein you the said* A. C. *fail not. Given under my hand and seal, at* ———, *in the county of* ———, *the* ——— *day of* ———, *in the* ——— *year of the reign of our said sovereign lord the now king, and in the year of our Lord one thousand eight hundred and* ———.

Note.—A summons for a witness, in behalf of either of the parties, may easily be extracted from the above form, or may be inserted in the above summons of the offender, by adding after the words, " *This my summons;*" *And you the said constable are hereby further required to summon* A. W. *of* ——— *in the said county of* ——— *to appear before me at the time and place aforesaid, to testify his knowledge in and concerning the premises. Herein, &c.*

L.

L. Conviction for selling Ale without Licence; on stat. 26 *G.* 2. *c.* 31. specially directed by stat. 35 *G.*3. *c.*113.

Middlesex. } A. B. *is convicted on his* [or *her*] *own confession,* [or, *on the oath of* ——] *of having sold ale,* [*beer,* or other liquors,] *in the parish of* ——— *in this county, on the* ——— *day of* ——— *without being licensed thereto according to law,* [or, *after being disabled to sell,* as the case may be.] *This is the first* [or *second*] *offence. Given under my hand and seal this* ——— *day of* ———.

M.

M. Notice of the above conviction, to be given either personally, or left at the place where the offence was committed.

County of } To the constable of ———
——— }

WHEREAS A. O. *of* ——— *in the county* ——— *yeoman, is this* ——— *day of* ——— *duly convicted before me* J. P. *esquire, one of his majesty's justices of the peace in and for the said county of* ——— *of having sold ale,* [*beer,* or other exciseable liquors, or as the case may be,] *without being duly licensed so to do; whereby he hath forfeited the sum of 20l. besides the costs and expences attending the said conviction, which costs and expences I have ascertained and assessed at the sum of* ———, *pursuant to the statute in that case made and provided: These are therefore to authorise and require you the said constable to give notice thereof unto the said* A. O., *and to demand and re-*

ceive of him the said A.O. *the sum of* ——, *whereof you are to pay the sum of* —— *to* A. I. *of* ——, *who informed me of the said offence, and* 10*l. the remainder thereof you are to pay to the churchwardens or overseers of the poor of the parish of* ——, *for the use of the poor of the said parish* (*being the place where the said offence was committed*). *And if the said* A. O. *shall refuse or neglect to pay the same for three days after notice of this my order, you are to certify the same unto me, that such further proceedings may be had thereon as to law doth appertain. Given, &c.*

N. Warrant of Distress on Non-payment of the Penalty for selling Ale without Licence; on stat. 35 G.3. c.113. not to be issued till three Days after Service of the above Notice.

N.

County of} To(a) the Constable of—— in the said county.
——

WHEREAS by a certain conviction, under my hand and seal, bearing date the —— *day of* ——, *in the year of our Lord* ——, A. O. *of* —— *in the county of* ——, *yeoman, was and is duly convicted before me* J. P. *esquire, one of the justices of our lord the king assigned to keep the peace of our said lord the king in and for the said county of* ——, *and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, on his* [or *her*] *own confession,* [or, *on the oath of* ——,] *of having sold ale,* [*beer,* or other liquors; specifying which of them, as the case shall happen to be,] *in the parish of* —— *in the said county of* —— *on the* —— *day of* ——, *without being licensed thereto according to law,* [or, *after being disabled to sell,* as the case may be,] *whereby he hath forfeited the sum of* 20*l. besides the costs and expenses attending the said conviction, which costs and expenses I have ascertained and assessed, and do hereby ascertain and assess, at the sum of* ——, *pursuant to the statute in such case made and provided:* [If the conviction was made in the absence of the party, say, *And whereas the said* A. O. *on the* —— *day of* —— *last past had due notice of the said conviction, but hath hitherto altogether neglected and refused to pay, and hath not yet paid, the said several sums of* —— *and* ——, *or any part thereof respectively:*] *These are therefore to command you to distrain the goods and chattels of the said* A. O., *wheresoever they shall or may be found within my jurisdiction, and also any goods or chattels found or being in the house of the said* A. O. *situate, standing, and being in the said parish of* —— *in the said county of* ——, (*being the house in which the said offence was committed*), *or which shall be found or be in any house, outhouse, cellar, vault, or other storehouse, belonging thereto, or occupied therewith, and on the goods and chattels so distrained to levy the said several sums of* 20*l. and* ——, *and if within the space of* five *days* (b) *next after such distress by you made, the said several sums of* 20*l. and* ——, *together with the reasonable charges of keeping the said*

(a) As to inserting the name of the constable where known, see *R.* v. *Weir*, 1 *B.&Cr.* 288. *post,* tit. Distress.

(b) By 27 *G.*2. *c.*20. § 1. not less than four or more than eight days.

distress, to be allowed by me the said justice, shall not be paid, that then you do sell the said goods and chattels so by you distrained as aforesaid, and out of the money arising by such sale, that you do pay one moiety of the said penalty or sum of 20l., and also the said sum of ———, *(being the costs and expenses aforesaid,) to* A. I. *of* ——— *in the county of* ———, *yeoman, who informed me of the said offence, and the other moiety of the said penalty or sum of 20l. to the overseers of the poor of the parish of* ——— *in the said county of* ———, *to the use of the poor of the said parish (being the parish in which the said offence was committed), returning to him the said* A. O. *the overplus on demand, the reasonable charges of taking, keeping, and selling the said distress being first deducted: and you are hereby commanded to certify to me the said justice on the* ——— *day of* ——— *now next ensuing, what you shall have done by virtue of this my warrant. Given under my hand and seal at* ——— *in the said county of* ———, *the* ——— *day of* ———, *in the* ——— *year of the reign of our said sovereign lord the now king, and in the year of our Lord* ———.

Return of Nulla Bona to be indorsed upon the Warrant.

I do hereby certify to J. P. *the justice within-named, that the within-named* A. O. *hath not any goods or chattels belonging to him the said* A. O. *within the jurisdiction of the said justice, and that there are not any goods or chattels found or being in the house of the said* A. O. *situate, standing, and being in the said parish of* ——— *in the said county of* ——— *(being the house* [or other place] *in which the offence within-mentioned was committed), or in any house, outhouse, cellar, vault, or other storehouse, belonging thereto, or occupied therewith, whereof I can levy the within-mentioned several sums of 20l. and* ———, *or any part thereof respectively, as within I am commanded. Dated this* ——— *day of* ——— *in the year of our Lord* ———.

A. C. *Constable of* ———
within named.

O. O. Commitment on Non-payment of the Penalty for selling Ale without Licence; on stat. 35 *G.* 3. *c.* 113.

County of ——— { To the constable of ———, in the said county, and to the keeper of his majesty's gaol at ——— in the said county.

WHEREAS by a certain conviction, under my hand and seal, bearing date the ——— *day of* ———, *in the year of our Lord* ———, A. O. *of* ——— *in the county of* ———, *yeoman, was and is duly convicted before me* J. P. *esquire, one of the justices of our lord the king, assigned to keep the peace of our said lord the king in and for the said county of* ———, *and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, on his* [or *her*] *own confession,* [or, *on the oath of* ———,] *of having sold ale,* [*beer,* or other liquors; specifying which of them, as the case shall happen to be,] *in the parish of* ——— *in the said county of* ——— *on the* ——— *day of* ——— *without being licensed thereto according to law,* [or,

after being disabled to sell, as the case may be,] *whereby he hath forfeited the sum of 20l., besides the costs and expenses attending the said conviction, which costs and expenses I have ascertained and assessed at the sum of ———, pursuant to the statute in such case made and provided; and whereas the said* A. O. *on the ——— day of ——— last past, had due notice of the said conviction, but hath hitherto altogether neglected and refused to pay, and hath not yet paid, the said several sums of 20l. and ———, or any part thereof respectively; and whereas on the ——— day of ——— last past, I did issue my warrant to the constable of ——— commanding him to distrain the goods and chattels of the said* A. O., *wheresoever they should or might be found within my jurisdiction, and also any goods or chattels found or being in the house of the said* A. O. *situate, standing, and being in the said parish of ——— in the said county of ——— (being the house* [or other place] *in which the said offence was committed), or which should be found or be in any house, outhouse, cellar, vault, or other storehouse, belonging thereto, or occupied therewith, and that the said constable should certify to me the said justice, on the ——— day of ——— now last past, what he should do by virtue of my said warrant; and whereas it duly appears to me by the return of* A. C. *constable of ——— aforesaid, dated the ——— day of ——— last past, that the said* A. O. *hath not any goods or chattels belonging to him the said* A. O. *within the jurisdiction of me the said justice, and that there are not any goods or chattels found or being in the house of the said* A. O. *situate, standing, and being in the said parish of ———, in the said county of ——— (being the house in which the said offence was committed,) or in any house, outhouse, cellar, vault, or other storehouse belonging thereto, or occupied therewith, whereof he could levy the said several sums of 20l. and ———,* + *These are therefore to command you the said constable of ——— aforesaid, to apprehend him the said* A. O., *and him safely to convey to the said gaol at ——— aforesaid, and there to deliver him to the said keeper thereof, together with this precept. And I do hereby command you the said keeper of the said gaol to receive into your custody in the said gaol him the said* A. O., *and him there safely to keep for the space of six calendar months, unless the said several sums of 20l. and ——— shall be sooner paid and satisfied; and for your so doing this shall be your sufficient warrant. Given under my hand and seal at ——— in the county of ———, the ——— day of ———, in the ——— year of the reign of our said sovereign lord the now king, and in the year of our Lord ———.*

Where the warrant of commitment is issued by a justice of a different county to that where the offender was convicted, the following addition to it should be made at the above +: *And whereas it duly appears to me, upon the oath of ——— the said constable of ——— aforesaid, that the names* J. P. *subscribed to the said warrant of distress are of the proper hand-writing of the said* J. P. *the justice granting the same, and that the said return indorsed on the said warrant of distress is a true return thereto.* The other alterations that would be necessary are sufficiently obvious.

P.

P. Information against an Alehouse-keeper for selling Ale or Beer in Vessels not of pewter sized to the Standard of the Exchequer, nor stamped or marked to be according to the said Standard: on stats. 3 G.4. c.77. § 20., and c.23. § 2. (See another Form of Information for the same Offence to recover a higher Penalty, *post*, Form I.)

County of ——— } *BE it remembered, that on the ——— day of ——— in the year of our Lord ———, at ——— in the said county of ———,* A. I. *of ———, in the county of ———, who prosecutes as well for the poor of the parish of ———, in the said county of ———, as for himself, in this behalf, in his proper person cometh before me,* I. P. *esquire, one of the justices of our lord the king, acting in and for the said county of ———, and as well for the poor of the said parish of ———, in the said county of ———, as for himself, giveth me, the said justice, to understand and be informed, that within thirty days next before the day of exhibiting the said information, to wit, on the ——— day of ——— in the year of our Lord one thousand eight hundred and ———, at the parish of ———, in the said county of ———, one* A. O. *of the parish of ———, in the county of ———, being an alehouse-keeper, victualler, and a retailer of ale and beer, did retail and sell in his said house at ——— aforesaid, to one* A. W. *of ——— in the said county, labourer, beer* [or *ale,* as the case may be] *in a certain vessel made of*(a) [as the case may be], *which said vessel was not of the content of a full ale quart, pint, or half-pint, made of pewter sized to the standard of the exchequer, nor stamped or marked to be of due size according to the said standard, and which said beer* [or *ale*] *had not been first measured in and by any such stamped pewter ale quart, pint, or half-pint, in the presence of the said* A. W. *who then and there purchased the same, according to the statute in that case made and provided, whereby and by force of the statute in such case made and provided, the said* A. O. *hath forfeited for his said offence a sum not exceeding* 40s., *together with the costs of conviction, the one half of the said penalty to be paid to him the said* A. I., *and the other half to the poor of the said parish of ———, (being the parish in which the said offence was committed;) and the said* A. I., *who prosecutes as aforesaid, prayeth that the said* A. O. *may be convicted of the said offence; and that the one half of the said penalty may be adjudged to be paid to him the said* A. I., *who prosecutes for the same as aforesaid, and the other half thereof to the poor of the said parish of ———, (being the parish where such offence was committed,) and the said* A. I. *who prosecutes as aforesaid, prayeth that the said* A. O. *may be convicted of the said offence; and that the one half of the said penalty may be adjudged to be paid to him the said* A. I., *and the other half thereof to the poor of the said parish of ———, according to the form of the statute in such case made and provided; and that the said* A. O. *may be summoned before two of* H. M.'s *justices of the peace for the said*

(a) By stat. 11&12 *W.*3. c.15. wood, earth, glass, horn, leather, or *pewter;* by stat. 3 *G.*4. *c.*77. § 20. *pewter* is made the only legal material of the stamped ale and beer measure.

county of ———, *to answer the said information and make his defence thereto.*

Before me, A. I.
J. P.

Q. Summons of an Alehouse-keeper for retailing and selling Ale or Beer in Vessels not of Pewter sized to the Standard of the Exchequer, nor stamped or marked to be according to the said Standard: on stats. 3 G.4. *c.*77. § 20. and *c.*32. § 2.

Q.

County of ——— { To A. O. of the parish of ———, in the said county, alehouse-keeper, and also to the constable of the said parish of ———.

WHEREAS an information hath been this day exhibited by A. *of* ———, *in the county of* ———, *who prosecutes as well for the poor of the parish of* ———, *as for himself in this behalf, before me* J. P. *esquire, one of his majesty's justices of the peace acting in and for the said county, setting forth that within* 30 *days next before the day of exhibiting the said information, to wit, on the* ——— *day of* ——— *in the year of our Lord one thousand eight hundred and* ———, *at the parish of* ———, *in the said county of* ———, *you* A. O. *of the said parish of* ———, *in the county of* ———, *being an alehouse-keeper, victualler, and a retailer of ale and beer, did retail, utter, and sell in your said house at* ——— *aforesaid to one* A. W. *of* ———, *in the said county, labourer, beer* [or, *ale,* as the case may be,] *in a certain vessel made of*(a) [as the case may be,] *which said vessel was not of the content of a full ale quart, pint, or half-pint, made of pewter sized to the standard of the Exchequer, nor stamped or marked to be of due size according to the said standard, and which said beer* [or, *ale*] *had not been first measured in and by any such stamped pewter ale quart, pint, or half-pint in the presence of the said* A. W., *who then and there purchased the same, according to the form of the statute in such case made and provided. Whereby, and by force of the statute in such case made and provided, you the said* A. O. *have forfeited for your said offence a sum not exceeding* 40s., *together with the cost of conviction, the one half of the said penalty to be paid to him the said* A. I., *and the other half thereof to the poor of the said parish of* ———, *(being the parish in which such offence was committed,) and praying that you the said* A. O. *may be convicted of the said offence, and that the one half of the said penalty may be adjudged to be paid to him the said* A. I., *who prosecutes for the same as aforesaid, and the other half thereof to the poor of the said parish of* ———, *according to the form of the statute in such case made and provided: These are therefore to summon and require you the said* A. O. *to appear before me and such other of his majesty's justices of the peace for the said county as may be then and there present on the* ——— *day of* ——— *next ensuing, at the hour of* ——— *in the forenoon of the same day, at* ——— *in the said county of* ———, *to answer the matter of complaint contained in the said information, and to shew cause, if any you have, why you should not be convicted of the said*

(a) See Note to Form P.

offence charged in the said information; and I do authorise you the said constable to serve this my summons, and do require you to attend me at the time and place last above-mentioned, then and there to make a return to me of the execution of this summons. Herein fail you not. Given under my hand and seal at ——— in the said county the ——— day of ———, in the year of our Lord 182—.

J. P. (*L. S.*)

For a form of conviction on stat. 3 *G*.4. *c*.77. § 20. for selling ale or beer in vessels not of pewter sized nor stamped or marked to be according to the standard of the exchequer; See the general form in stat. 3 *G*.4. *c*.23. *infra*, Conviction.

R. Warrant of Distress to levy the Penalties for selling Ale or Beer in a Vessel not of Pewter sized, stamped or marked according to the Standard of Exchequer, with Costs of Conviction and Charges of Distress; on stat. 3 *G*.4. *c*.77. *s*.20.

County of ———. } To (*a*) the constable of ——— in the county of ——— and to all other constables in and for the said county.

*W*HEREAS A. O. *of* ———, *in the parish of* ———, *and county of* ——— *aforesaid, alehouse-keeper, hath this day been duly convicted before us,* J. P. *and* K. P. *esquires, two of his majesty's justices of the peace in and for the said county, on the oath of* A. W. *a credible witness, of retailing and selling beer,* [or *ale,* as the case may be,] *on the* ——— *day of* ———, *in his house at* ——— *aforesaid, in a vessel made of earth, &c.* [as the case may be (b),] *which said vessel was not of the content of a full ale quart, pint, or half-pint, made of pewter sized to the standard of the Exchequer, nor stamped or marked to be of the size according to the said standard, and which said beer* [or, *ale*] *had not been first measured in and by any such stamped pewter ale quart, pint, or half-pint in the presence of the said* A. W. *who then and there purchased the same, contrary to the form of the statute in such case made and provided, whereby, and by force of the statute in that case made and provided, the said* A. O. *was adjudged by us to have forfeited a sum not exceeding* 40*s*., *together with the costs of conviction, the one half of the said penalty to be paid to him the said* A. I., *who prosecutes for the same, and the other half thereof to the poor of the said parish of* ———, (*being the parish in which such offence was committed,*) *over and above the reasonable costs of the said* A. I., *by him expended in and about the said conviction, and which said costs were awarded by us to him the said* A. I. *with his assent, at the sum of* —*l*., *according to the statute in that case made and provided.* (c) *These are therefore to require you to distrain the goods and chattels of the said* A. O., *wheresoever they may be found within our jurisdiction, and on the said goods and chattels so distrained to levy the said sum of* 40*s*., *and also the*

(a) As to inserting the name of the constable, see *R.* v. *Weir*, 1 *B.* & *Cr.* 288. *post*, tit. Distress.

(b) See Note to Form P.

(c) 18 *G*.3. *c*.19.

said sum of —l. (d), *the costs above mentioned, of the said* A. I., *making together the sum of —l.; and if within the space of* (a) *—— days next after such distress by you made, the said last mentioned sum, together with the reasonable costs and charges of taking and keeping* (b) *the said distress (to be allowed by us the said justices) shall not be paid, that then you do sell the said goods and chattels so by you distrained as aforesaid, and out of the money arising by such sale, that you do pay the sum of* 20*s., one half part of the said forfeiture of* 40*s. to* A. I. *who prosecutes for the same as aforesaid, and also the said sum of —l. so awarded to him for his costs of the said conviction, and that you do further pay the sum of* 20*s., the other half part of the said forfeiture of* 40*s., to the overseers of the poor of the said parish of ———, within which the said offence was committed, for the use of the poor, there returning to him the said* A. O. *the overplus on demand, the reasonable charges of taking, keeping, and selling the said distress being first deducted. And you are to certify to me with the return of this precept what you shall have done in the execution thereof. Herein fail you not. Given under our hands and seals at ———, in the said county, this ——— day of ———, in the year of our Lord* 182—.

J. P. (*L. S.*)
K. P. (*L. S.*)

S. T. Information on Drunkenness; on stats. 4 *J. c.*5. and 21 *J. c.*7. S. T.

County of ——— } The information of *A. I.* of ——— in the county aforesaid, yeoman, exhibited before me *J. P.* esquire, one of his majesty's justices of the peace for the said county, the —— day of ———, in the year ———, who on his oath saith,

THAT A. O. *of ——— in the county aforesaid, labourer, on the ——— day of ——— in the year aforesaid, at the parish of ——— in the said county, was drunk; contrary to the statutes in such case made: And thereupon he the said* A. I. *prayeth that he the said* A. O. *may forfeit the sum of* 5*s. to the use of the poor of the said parish, as by the said statutes is required.*

Before me, A. I.
J. P.

U. Summons thereupon. U.

County of ——— } To the constable of ——

FORASMUCH as information upon oath hath been made before me J. P. *esquire, one of his majesty's justices of the peace for the said county, that* A. O., *of ———, in the county aforesaid, labourer, on the ——— day of ——— in the year ———, at the parish of ———, in the county aforesaid, was drunk, contrary*

(d) This sum must be fixed, 18 *G.*3. *c.*19., and by the justices themselves; see *Rex* v. *St. Mary, Nottingham*, 13 *East*, 57. note.
(a) Not less than four nor more than eight days. Stat. 27 *G.*2. *c.*20. § 1.
(b) 27 *G.*2. *c.*20. § 2.

to the statutes in such case made: These are therefore to require you to summon the said A. O. *to appear before me at* ———, *in the said county, on* ———, *the* ——— *day of* ———, *to answer unto the said information, and to shew cause why the penalty of* 5s. *should not be levied on the goods of him the said* A. O. *for the said offence, and be you then there to certify what you shall have done in the premises. Given under my hand and seal, the* ——— *day of* ———, *in the year* ———.

W. W. For a Form of Conviction, see the general Form, title **Conviction.** If the Justice convicts on his own view, the Information and summons are needless, and the Form may be thus:

County of ——— } *BE it remembered, that on the* ——— *day of* ———, *in the year of our Lord* ———, *at the parish of* ———, *in the county of* ———, I J. P. *esquire, one of the justices of our lord the king assigned to keep the peace in and for the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, personally saw one* A. O. *of the parish of* ——— *aforesaid, labourer, drunk, contrary to the form of the statutes in that case made and provided: Whereupon it is considered and adjudged by me the said justice, that the said* A. O. *be convicted, and he is by me accordingly hereby convicted of the offence of being drunk, upon my own view as aforesaid, according to the form of the statutes in that case made and provided: And I do hereby adjudge that the said* A. O. *for the said offence hath forfeited the sum of* 5s. *to be paid and distributed as the law directs. In witness whereof I the said justice to this present conviction have set my hand and seal, the day and year above written.*

X. X. Warrant to the Churchwardens (if they are not present at the Conviction, or the Offender makes Default by not appearing) to receive the Penalty for Drunkenness; by stats. 4 *J. c.*5. and 21 *J. c.*7.

County of ——— } To the churchwardens of the parish of ——— in the said county.

FORASMUCH as A. O. *of* ——— *in the county aforesaid, labourer, is convicted before me* J. P. *esquire, one of his majesty's justices of the peace for the said county, for that he the said* A. O. *on the* ——— *day of* ———, *in the year* ———, *at the parish of* ———, *in the said county, was drunk, contrary to the statutes in such case made; whereby he hath forfeited the sum of* 5s., *to the use of the poor of the said parish: These are therefore to require you to demand and receive of and from him the said* A. O. *the said sum of* 5s., *to be by you accounted for to the use aforesaid: And if he shall refuse or neglect to pay the same, by the space of one week after such demand made, that then you certify to me such refusal and neglect, to the end that such proceeding may be had thereupon, as to justice doth appertain. Given under my hand and seal the* ——— *day of* ———, *in the year* ———.

Y. Warrant to levy the Penalty of Drunkenness, on Non-payment; by stats. 4 *J. c*.5. and 21 J. *c*.7. Y.

County of ——— } To the constable of ——— in the saidcounty.

WHEREAS A. O. *of ——— in the parish of ———, in the county aforesaid, labourer, was on the ——— day of ——— convicted before me ———, one of his majesty's justices of the peace for the said county, for that he the said* A. O. *was, on the ——— day of ———, drunk, at ——— aforesaid, in the parish and county aforesaid, by which he hath forfeited the sum of* 5s. *And whereas I the said ——— did issue my warrant on the ——— day of ———, to the churchwardens of the parish of ——— aforesaid, to demand and receive the said sum of* 5s. *of and from the said* A. O.: *and whereas it duly appears to me, as well on the oath of* C. W. *churchwarden of the parish of ——— aforesaid, as otherwise, that they the said churchwardens did on the ——— day of ——— demand the said sum of* 5s. *of and from the said* A. O., *but that he the said* A. O. *hath neglected to pay the same as aforesaid, and that the same is not yet paid: these are therefore to command you forthwith to levy the said sum by distraining the goods of him the said* A. O. *And if within the space of* [*six*] *days next after such distress by you taken, the said sum, together with reasonable charges for taking and keeping the said distress, shall not be paid, that then you do sell the said goods so by you distrained as aforesaid, and out of the money arising by such sale, that you do pay the said sum of* 5s. *to the churchwardens of the said parish, for the use of the poor of the said parish, rendering to him the said* A. O. *the overplus upon demand, the necessary charges of taking, keeping, and selling the said distress being first deducted. And if the said* A. O. *be not able to pay the said sum of* 5s. *and sufficient distress cannot be found whereon to levy the said sum, that you certify the same to me, together with the return of this warrant. Given under my hand and seal this ——— day of ———*

Z. Certificate by the Constable of Want of Distress. Z.

County of ——— } A. C. *constable of ———, in the said county, maketh oath this ——— day of ———, in the year ———, before me the justice within-mentioned, that he hath made diligent search for, but doth not know of, nor can find any goods of the within-mentioned* A. O. *whereon to levy the within sum of* 5s.

Before me the said justice, A.C.

J. P.

A a

A a. Commitment to the Stocks for Drunkenness on Inability to pay the Penalty; on stats. 4 *J. c.*5. and 21 *J. c.*7.

County of } To the constable of ——— in the said county.
——— }

WHEREAS A. O. *of* ——— *in the said county, labourer, was on the* ——— *day of* ——— *convicted before me* ———, *one of his majesty's justices of the peace for the said county, for that he the said* A. O. *was on the* ——— *day of* ——— *drunk at* ——— *aforesaid, in the parish of* ———, *in the said county; whereby he hath forfeited the sum of* 5*s. And whereas it duly appears to me that the said* A. O. *is not able to pay the said sum of* 5*s. These are therefore to require you in his majesty's name, to set him the said* A. O. *in the stocks, there to remain for the space of six hours. Given under my hand and seal the* ——— *day of* ———.

B b.

B b. Information on stat. 3 *G.*4. *c.*77. § 21. against a Brewer for selling Ale or Beer in a Barrel not containing the full Quantity charged for. See stat. 3 *G.*4. *c.*23. § 2. title Conviction.

County of } *BE it remembered, that on the* ——— *day of* ———, *in*
——— } *the year of our Lord one thousand eight hundred and twenty* ———, *at* ———, *in the said county of* ———, A. I. *of* ———, *in the county of* ———, *labourer, who prosecutes as well for our sovereign lord the king as for himself in this behalf, in his proper person comes before me* J. P. *esquire, one of his majesty's justices of the peace in and for the said county of* ———, *and on his oath gives me the said justice of peace to understand and be informed, that within thirty days next before the day of exhibiting the said information, to wit, on the* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and twenty* ———, *at the parish of* ———, *in the said county of* ———, *one* A. O., *being a brewer* [or "*wholesale dealer in ale or beer,*" as the case may be] *in that part of the U.K. called* England, *did sell and deliver to one* C. D. *of* ——— *in the said county of* ———, *gentleman,* [or if the purchaser is an inn or alehouse-keeper or victualler, state, "*the said* C. D. *being an innkeeper, &c.*" according to the fact,] *ale* [or *beer*, as the case may be] *in a certain barrel,* [or *cask* or *vessel*, as the case may be,] *and did then and there charge the said* C. D. *for the same as for* 36 *gallons of ale* [or *beer*] *which said barrel was not able to contain the full quantity of* 36 *gallons of ale* [or *beer* (a)], *and in fact contained a less quantity, to wit,* ——— *gallons, whereby and by force of the statute in that case made and provided, the said* A. O. *has forfeited for his said offence a sum not exceeding* 5*l. for such barrel so deficient in size as aforesaid; one moiety thereof to the use of his majesty, his heirs and successors, and the other moiety to the said* A. I., *who prosecutes or sues for the same, which said* A. I. *prays that the said* A. O. *may be summoned to answer the said information, and make his defence.*

Sworn before me the said justice,

J. P. A. I.

(a) See 5 *G.* 4. *c.* 54. § 17. Excise, *Ale* and *Beer*. Vol. II. p. 91.

Forms of Proceedings on stat. 3 *G*.4. *c*.77. for Offences by Alehouse-keepers in Breach of their Recognizances.

I. Information against an Alehouse-keeper on stats. 3 *G*.4. *c*. 77. § 9. 12. & 20. See 3 *G*. 4. *c*. 23. § 2. post, title Conviction. I.

County of ——— } *BE it remembered, that on the* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ——, *at* ——— *in the said county of* ———, A. I. *of* —— *in the county of* ———, *labourer, who prosecutes as well for our sovereign lord the king as for himself in this behalf, in his proper person comes before me* J. P. *esq. one of his majesty's justices of the peace in and for the said county of* ———, *and on his oath gives me the said justice to understand and be informed, that one* A. O., *of the parish of* ———, *in the county of* ———, *being an alehouse-keeper, victualler, and retailer of ale or beer, did in his house* [or other *premises*] *at* ——— *aforesaid, on the* ——— *day of* ——— *instant, sell one quart of ale which was fraudulently diluted,* [or *adulterated,* as the case may be,] *he the said* A. O. *then and there well knowing the same to be so,* or *use, in selling ale, a pot* or *measure not of full size, knowing the same to be so;* or *wilfully* or *knowingly permit drunkenness* or *tippling;* or *get drunk,* or *knowingly suffer gaming with cards, draughts, dice, bagatelle,* [or, as the case may be,] *by journeymen, labourers, servants, or apprentices,* [as the case may be,] *or bull, bear, or badger-baiting, cock-fighting,* or other such sport or amusement in any part of the premises; or *knowingly and designedly, with a view to harbour and entertain such, permit* or *suffer men* or *women of notoriously bad fame, or dissolute girls and boys, to assemble and meet together in his house,* or any of the *premises,* or *keep open his house,* or *permit* or *suffer drinking* or *tippling in part of his premises during the hours of divine service on* Sunday *the* ——— *day of* ———, or *keep open his house* or other *premises during late hours of the night,* or *early in the morning, for other purpose than the reception of travellers,* [or, as the case may be,] *contrary to an act passed in the third year of the reign of king* George *the 4th, intituled* " An act for amending the laws for regulating the manner of licensing alehouses in that part of the U. K. called *England,* and for the more effectually preventing disorders therein;" *whereby and by force of the said statute the said* A. O. *has forfeited the sum of 5l., being his first offence,* [or, 10*l*. *being his second offence,* or 100*l*. *being his third offence,* as the case may be,] *one moiety thereof to the use of his majesty, his heirs and successors, and the other moiety to the said* A. I., [but if the information be laid for not using standard measures, then say, in the words of the § 20. stat. 3 *Geo*.4. *c*.77., *one-half thereof to be paid to the said* A. I. *who prosecutes or sues for the same, and the other half to the poor of the said parish of* ———, *where the offence was committed,*] *who prays that the said* A. O. *may be summoned before two of his majesty's justices of the peace for the said county of* ———, *to answer the said information and make his defence thereto.* [If, however, the information be for the third offence, the conclusion should be — *who prays that the said* A. O. *may be summoned to*

appear at the next general or quarter sessions of the peace for the said county, [or, as the case may be,] *to be held at* ———, *&c., then and there to answer the matter of such complaint.*]

Before me,

J. P. A. I.

II.

II. Summons thereon.

County of ——— } To the constable of ———.

WHEREAS information and complaint upon oath have been made before me, J. P. *esq., one of his majesty's justices of the peace in and for the said county, by* A. I. *of* ———, *in the county of* ———, *labourer, who prosecutes as well for our sovereign lord the king as for himself in this behalf,* [or, if the complaint should be for not using standard measures, the summons should be conformable to the information,] *that one* A. O., *of the parish of* ———, *in the county of* ———, *an alehouse-keeper, victualler, and a retailer of ale or beer, did* [here state the offence as in the information]; *These are therefore to require you to summon the said* A. O. [if it be the first or second offence] *to appear before me and such others of his majesty's justices of the peace for the said county of* ———, *as shall be present at* ———, *in the said county, on the* ——— *day of* ——— *next, at* ——— *o'clock in the forenoon, then and there to answer to the matter of complaint contained in the said information,* [or if it be the third offence, *against the tenor of the licence or recognizance,* say—*to appear at the next general or quarter sessions of the peace for the county, riding, liberty, town corporate, or place, to be held at* ———, *on the* ——— *day of* ———, *then and there, &c.*] *Herein fail not, as also to make a due return of the execution of this summons. Given under my hand and seal this* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———.

J. P. (*L. S.*)

[N. B. For the Form of Conviction, vide *ante*, W., which being by two justices, a copy of it should be served on the offender, if not present at the time of conviction, and oath made of the refusal to obey it.]

III.

III. Commitment on Non-payment of the Penalty within 14 days if the First Offence, and 7 days if the Second. (*This may be by one justice, according to* stat. 3 Geo. 4. c. 23. § 2.)

County of ——— } To the constable of ——— in the said county, and to the keeper of ———.

WHEREAS by a certain conviction under the hands and seals of J. P. *and* K. P. *esquires, two of his majesty's justices of the peace for the said county, and bearing date the* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———, A. O. *of* ——— *in the said county, victualler, was duly convicted before them the said justices of the peace, on the oath of* A. W. *a credible witness,* [or, *on his own confession,* as the case may be,] *for that he the said* A. O. *did* [here follow the words of

the information,] *whereby he the said* A. O. *has forfeited the sum of 5l. being his first offence,* [or, as the case may be,] *but which penalty was, by them the said justices, mitigated to ———, besides the sum of ——— for the costs and expenses of convicting the said offender: and whereas it appears unto me* L. P., *one of his majesty's justices of the peace for the said county of ———, on the oath of* J. C. *constable of ———, that the said* A. O. *on the ——— day of ——— had due notice of the said conviction, but has hitherto for the space of* 14 *days* [or, if it be the second offence, say *seven days*] *altogether neglected and refused to pay the said penalty with the costs and expenses of conviction as aforesaid, or any part thereof respectively: These are therefore to command you the said constable to apprehend the said* A. O., *and him safely to convey to the said ——— at ——— aforesaid, and there deliver him to the said keeper thereof, together with this precept. And I do hereby command you the said keeper of the said ——— to receive the said* A. O. *into your custody in the said ———, and him there safely to keep for the space of one month,* [or, if it be the second offence, say *two calendar months,*] *unless he shall sooner pay the said penalty and the said costs, charges, and expenses; and for your so doing this shall be your sufficient warrant. Given under my hand and seal at ———, in the county of ———, the ——— day of ———, in the year of our Lord one thousand eight hundred and ———.*

J. P.

IV. Recognizance to bind the Informer, &c. to appear at the Quarter Sessions. IV.

County of ——— } *BE it remembered that on the ——— day of ——— in the ——— year of the reign of our sovereign lord* George *the* 4*th, of the U. K. of* Great Britain *and* Ireland, *king, defender of the faith,* A. I. *of ——— in the county of ———, labourer, came before me,* J. P. *esquire, one of his majesty's justices of the peace for the said county of ———, and acknowledged to owe to our said lord the king the sum of ——— of lawful money of* Great Britain, *to be levied of his goods and chattels, lands and tenements, to the use of our said lord the king, his heirs and successors, if he the said* A. I. *shall make default in the condition following:—*

Whereas the above-bound A. I. *on the ——— day of ——— instant, came before me the said justice, and on his oath gave me to understand and be informed that one* A. O., [here follow the words of the information,] *whereby he has forfeited the sum of* 100l., *being for his third offence: Now the condition of this recognizance is such, that if the above-bound* A. I. *shall appear at the next general quarter sessions of the peace to be held at ———, in and for the said county,* [*riding, city, liberty, town corporate,* or *place,* as the case may be,] *then and there to give evidence against the said* A. O. *so complained of and informed against, and not depart without leave of the court, then this recognizance to be void.*

Acknowledged before me,

J. P.

V.

V. Information against a Witness on stat. 3 G.4. c.77. § 13. for neglecting or refusing to appear to give Evidence.

County of ——— } *BE it remembered that on the ——— day of ———, in the year of our Lord one thousand eight hundred and ———, at ——— in the said county of ———,* A. I. *of ——— in the county of ———, farmer, in his proper person comes before me,* J. P. *esquire, one of his majesty's justices of the peace in and for the said county, and then and there giveth me the said justice to understand and be informed, that* A. W. *of ——— in the said county, labourer, was on the ——— day of ——— instant, duly summoned as a witness to give evidence before* J. P. *and* K. P *esquires, two of his majesty's justices of the peace acting in and for the said county,* [or, as the case may be,] *at ——— in ——— in the said county, on ———, the ——— day of ——— instant, at the hour of eleven in the forenoon of the same day, touching a complaint against* B. A. *of ——— in the said county, alehouse-keeper, victualler, and retailer of beer and ale,* [or, as the case may be,] *for selling one quart of ale which was fraudulently diluted,* [or, *adulterated,* as the case may be.] *knowing the same to be so,* [or, as the case may be,] *contrary to the form of the statute in such case made and provided; but that the said* A. W. *did wilfully neglect and refuse to appear at such time and place as aforesaid* (a), *and did not assign a reasonable excuse for such his neglect and refusal: Whereby and for which neglect and refusal he hath forfeited the sum of 40s., one moiety thereof to the use of his majesty, his heirs and successors, pursuant to the statute in such case made and provided, and the other moiety to the said* A. I., *who prosecutes and sues for the same, and who prays that the said* A. W. *may be summoned to appear before two of his majesty's justices of the peace for the said county of ———, to answer to the said information, and to make his defence thereto.*

Before me, A. I.
J. P.

VI.

VI. Summons thereupon.

County of ——— } To the constable of ——— in the said county.

WHEREAS information hath been made before me, J. P. *esquire, one of his majesty's justices of the peace in and for the said county, by* A. I. *of ——— in the county of ———, that* A. W. *of ——— in the said county, labourer, was on the ——— day of ——— instant, duly summoned as a witness to give evidence before* J. P. *and* K. P. *esquires, two of his majesty's justices of the peace acting in and for the said county,* [or, as the case may be,] *at ——— in ——— in the said county, on ———, the ——— day of ——— instant, at the hour of eleven in the forenoon of the same day, touching a complaint against* B. A. *of ——— in the said county, alehouse-keeper, victualler, and a retailer of beer and ale, for selling one quart of ale which was fraudulently diluted,* [or, *adulterated,* as the case may be,] *knowing the same to be so,* [or, as the case may be,] *contrary to the form of the statute in*

(a) *Qu.* Ought not the witness to receive his *expenses* when summoned, before he can be subjected to a penalty for not appearing? It would, at all events, be prudent to tender them, in order to obviate all doubt. *Ed.*

such case made and provided; and that the said A. W. *did wilfully neglect and refuse to appear at such time and place as aforesaid, and did not assign a reasonable excuse for such his neglect and refusal: Whereby and for which neglect and refusal the said* A. W. *hath forfeited the sum of* 40s., *one moiety thereof to the use of his majesty, his heirs and successors, and the other moiety to the said* A. I., *who informed me of the said offence: These are therefore to require you to summon the said* A. W. *to appear before me and others of his majesty's justices of the peace for the said county, at* ——— *in the said county, on* ——— *the* —— *day of* ——— *instant, at the hour of eleven in the forenoon of the same day, to answer to the said information, and to be further dealt with according to law. And be you then there to certify what you shall have done in the premises. Herein fail you not. Given under my hand and seal the* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and twenty* ——.

J. P. (*L. S.*)

VII. Warrant of Distress thereon.

VII.

County of ——— } To ——(a) the constable of ——— in the said county.

WHEREAS A. W. *of* ——— *in the said county, labourer, is this day duly convicted before us,* J. P. *and* K. P. *esqrs., two of his majesty's justices of the peace in and for the said county, by the oath of* A. X. *a credible witness,* [or, A. X. *and* B. X. *two credible witnessess,* as the case may be,] *for that he the said* A. W. *was on the* —— —— *day of* ——— *instant, duly summoned as a witness to give evidence before* J. P. *and* K. P. *esquires, two of his majesty's justices of the peace acting in and for the said county,* [or, as the case may be,] *at* ———, *in* ———, *in the said county, on* ———, *the* ——— *day of* ———, *at the hour of* ———, *in the* ——*noon of the same day, touching a complaint against* B. A. *of* ——— *in the said county, alehouse-keeper, victualler, and a retailer of beer and ale, for selling one quart of ale which was fraudulently diluted,* [or, *adulterated,* as the case may be,] *he the said* B. A. *then and there well knowing the same to be so,* [or, as the case may be,] *contrary to the form of the statute in such case made and provided: and that the said* A. W. *did wilfully neglect and refuse to appear at such time and place as aforesaid, and did not assign a reasonable excuse for such his neglect and refusal; whereby and for which neglect and refusal he the said* A. W. *hath forfeited the sum of forty shillings, one moiety thereof to the use of his majesty, his heirs and successors, and the other moiety to* A. I., *who informed us of the said offence: These are, therefore, to authorise and command you to levy the said sum of forty shillings by distress of the goods and chattels of him the said* A. W., *and if within the space of four days next after such distress by you taken, the said sum of forty shillings, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained; and out of the money arising by such sale, that you do pay one half of the said sum of forty shillings to the said* A. I., *and*

(a) Insert the name of the constable if known with certainty. See *R.* v. *Weir, post,* tit. Distress.

the other half to the use of his majesty, returning the overplus on demand unto him the said A. W., *the reasonable charges of taking, keeping, and selling the said distress being first deducted. And if sufficient distress cannot be found of the goods of the said* A. W. *whereon to levy the said sum of forty shillings, that then you certify the same to us, together with the return of this precept. Given under our hands and seals the* —— *day of* ——, *in the* —— *year of the reign of our sovereign lord* George *the fourth, and in the year of our Lord one thousand eight hundred and* ——.

VIII. **VIII. Recognizance(*a*) or Surety on stat. 3 *G.*4. *c.*77. § 14.**

County of —— } *BE it remembered that on the* —— *day of* —— *in the* —— *year of the reign of our lord* George *the fourth, of the U. K. of* Great Britain *and* Ireland, *king, defender of the faith,* B. A. *of* —— *in the said county, alehouse-keeper,* [or, *victualler,* as the case may be,] C. D. *of* —— *in the county of* ——, *yeoman, and* I. D. *of the same place, yeoman, personally came before us,* J. P. *and* K. P. *esquires, two of the justices of our said lord the king assigned to keep the peace of the said county, and acknowledged themselves to owe to our said lord the king, that is to say, the said* B. A., *the sum of* —— *pounds, and the said* C. D. *and* I. D. *each the sum of* —— *pounds separately, of good and lawful money of* G. B., *to be made and levied of their goods and chattels, lands and tenements respectively, to the use of our said lord the king, his heirs and successors, if the said* B. A. *shall make default in the condition hereon indorsed* [or, *hereunder written*].

The condition of the above-written [or, *within-written*] *recognizance is such, that whereas the said* B. A. *was this day duly convicted before us, the justices aforesaid, of having on the* —— *day of* —— *sold ale* [or, *beer,* as the case may be,] *fraudulently diluted,* [or, *adulterated,* as the case may be,] *he the said* B. A. *then and there well knowing the same to be so,* [or, as the case may be,] *whereby and for which offence he the said* B. A. *hath forfeited the sum of* —— *pounds: Now if the said* B. A. *shall duly prosecute an appeal against the said conviction, at the next general or quarter sessions of the peace to be holden at* ——, *in and for the county of* —— *aforesaid, and in case the said conviction shall be then and there confirmed by the Court, if he, the said* B. A., *shall forthwith duly pay or cause to be paid the said penalty of* —— *pounds, together with the costs and expenses expressed in the said conviction, then the said recognizance to be void, or else remain in full force.*

Taken and acknowledged the day and year first above [or *within*] *written, before us,* J. P.
K. P.

(*a*) The stat. does not direct that the justices shall take a recognizance, but that the person convicted shall give security to their satisfaction (*ante*, p.78.). I know of no other security which justices are empowered to take, and this was the construction formerly put on stat. 18 *Eliz.* c.3. where the expression *unless they shall put in sufficient surety to perform the said order,* "or else personally to appear at the next general sessions of the peace," was construed to mean *by recognizance.* See tit. Bastard, § V. *Ed.*

Aliens.

[Stats. 56 *G*.3. *c*.86. 58 *G*.3. *c*.96. 1 *G*.4. *c*.105. 3 *G*.4. *c*.97. 5 *G*.4. *c*.37.]

BY stat. 56 *Geo*.3. *c*.86. after reciting, that "whereas it is expedient that provision should be made for establishing regulations respecting aliens arriving in this kingdom, or resident therein, in certain cases," it is enacted, "That when and so often as H. M. shall, by proclamation, or order in council, or under his sign manual, or the lord lieut. and privy council of *Ireland*, shall, by proclamation or order of council, direct, that any alien or aliens who may be within this realm, or who may hereafter arrive therein, shall depart this realm within a time limited in any such proclamation or order respectively, and any such alien shall knowingly and wilfully refuse or neglect to pay due obedience to such proclamation or order respectively, or shall be found in this realm, or any part thereof, contrary to such proclamation or order, as the case may be, it shall be lawful for any of H. M's. principal secretaries of state, or the lord lieut., &c. of *Ireland*, or his or their chief secretary, or for any justice of the peace, or for any mayor or chief magistrate of any city or place, to cause every such alien to be arrested, and to be committed to the common gaol of the county or place where he or she shall be so arrested, there to remain without bail or mainprize, until he or she shall be taken in charge for the purpose of being sent out of the realm under the authority hereinafter given for that purpose."

56 G.3. c.86.

Aliens not departing this realm when ordered by proclamation, &c. may be committed to gaol.

§ 2. "Every such alien so knowingly and wilfully refusing or neglecting to pay due obedience to any such proclamation or order as aforesaid, or being found in this realm, or any part thereof, contrary to such proclamation or order, and who shall be lawfully convicted thereof in H. M's. courts of K. B. in *Westminster* or in *Dublin*, &c., may, at the discretion of such courts respectively, be adjudged to suffer imprisonment for any time not exceeding 1 month for the first offence, and not exceeding 12 months for the second and any subsequent offence."

Penalty on aliens disobeying proclamations, &c.

§ 3. "It shall be lawful for any one of H. M's. principal secretaries of state, or the lord lieut., &c. of *Ireland*, or his chief secretary, in any case in which he or they shall apprehend that any alien will not pay immediate obedience to any such proclamation or order as aforesaid, or in any case when any alien shall have been arrested or committed for refusal or neglect to obey any such order, or shall have been convicted of such refusal or neglect, and either before or after such alien shall have suffered the punishment inflicted for the same, by warrant under his hand and seal, to give such alien in charge to one of H. M's. messengers, or to any other person or persons to whom he shall think proper to direct such warrant, in order to his or her being conducted out of the kingdom, and such alien shall be so conveyed accordingly: Provided, that where such alien (not having been convicted as aforesaid) shall allege any excuse for not complying with such proclamation or order, or any reason why such proclamation or order should not be enforced, or why further time should be allowed him for complying therewith, it shall be lawful

Aliens may be given in charge by warrant of a secretary of state, to be conveyed out of the kingdom:

But if sufficient reason be given for not complying with the proclamation, &c. the privy

56 G. 3. c. 86.

council may [al]low the same.

for the lords of H. M's. privy council, in *G. B.* or *Ireland*, to judge of the sufficiency of such excuse or reason, and to allow or disallow the same, either absolutely or on such conditions as they shall think fit; and where such alien shall be in custody under such warrant of any of H. M's. secretaries of state as aforesaid, the messenger or other person in whose custody he shall be, forthwith upon its being signified to him that such excuse or reason is alleged by such alien, make known the same to the said secretary of state, who, upon receiving such notification, or in any case in which he shall be informed that any such excuse or reason is alleged by or on behalf of any alien under proclamation or order to quit the realm, shall forthwith suspend the execution of such proclamation or order until the matter can be determined by the said lords of H. M's. said privy council, and such alien, if in custody under any such warrant, shall remain in such custody until the said lords shall have signified their determination thereon, unless in the mean time the said secretary shall consent to, or the said lords shall make order for the release of such alien, either with or without security."

§ 4. Masters of vessels shall, on their arrival, declare in writing to the inspector of aliens or officer of the customs the number of aliens on board, specifying their names and descriptions.

§ 5. Masters neglecting to make such declaration shall forfeit 10*l*. for each alien he shall have had on board.

§ 6. Provided, That nothing herein before contained shall extend to mariners certified to be employed in the navigation of the ship.

§ 7. Aliens on their arrival, and on their departure, shall declare in writing to the inspector or officer of the customs their names, descriptions, and occupations, &c. on pain of certain punishments on aliens arriving, who shall neglect to make such declaration, or shall make a false one. viz. 3 months imprisonment or judgment to depart the realm.

§ 8. " The inspector of aliens or officer of the customs to whom such declaration shall be made, as aforesaid, shall immediately register the same in a book to be kept by him for that purpose. Form of certificate. Form of counterpart.

Aliens (except domestic servants) shall, within one week after their arrival, produce their certificates to the chief magistrate of the place, or to a justice; or where the certificate is lost, deliver in an account of the particulars.

§ 9. " Every alien arriving in this realm after the passing of this act, except such domestic servants as aforesaid, shall, within one week after his or her arriving at the place which shall be expressed in the certificate delivered to him or her as aforesaid, as the place to which he or she proposes to go, produce such certificate, if in *London*, at the aliens' office, in *Crown-street*, *Westminster*, or to the chief magistrate of any other town or place in which he or she shall be; and if there be no chief magistrate in such town or place, then and in such case, to some one of the justices of the peace in and for the county, city, town, or district in which such alien shall be, or to such person or persons as shall be authorised to that effect by such chief magistrate or justice, as the case may be, by warrant under his hand and seal; or in case such certificate shall be lost, shall deliver a full and true account of all the particulars that shall have been contained in such certificate; and every such alien as aforesaid, who shall so neglect or refuse to produce such certificate as aforesaid, or deliver such account as aforesaid, or who shall wilfully deliver any false

Penalty for neglecting to do

account respecting any of the particulars herein-before mentioned, on conviction thereof before any two of H. M's. justices of the peace for the county, city, town, or district in which such alien shall be, may be adjudged, at the discretion of such justices, for the first offence, to suffer imprisonment for any time not exceeding one month."

56 G. 3. c. 86.

§ 10. "It shall be lawful for the lord mayor and mayors, or any one or more of the aldermen of the cities of *London* and *Dublin*, and for any one or more of H. M's. justices of the peace for any county, riding, stewartry, city, or place, being specially authorised by one of H. M's. principal secretaries of state, or by such secretary of the lord lieutenant or chief governor aforesaid, by warrant under his hand and seal, or generally authorised by order of his majesty in council, or any mayor or chief magistrate, or other magistrate or magistrates of any city, borough, or town corporate, so authorised, to cause any alien whom he or they shall have cause to suspect to be a dangerous person, to be taken into custody and examined, and either to discharge or detain such alien in custody as shall appear advisable; and if it shall appear fit to detain such alien in custody, it shall be lawful for such mayor, alderman, or chief magistrate, or other magistrate or magistrates, or such justice or justices, by warrant under his or their hand and seal, or hands and seals, to order such alien to be detained in custody until H. M's. pleasure shall be known, there to remain without bail or mainprize: Provided, nevertheless, in every such case, every such mayor, alderman, chief magistrate or magistrates, justice or justices, shall, and he and they is and are hereby directed and required, forthwith to transmit an account of his or their proceedings touching such alien, and of the reasons for which he shall have thought fit to detain such alien, to one of his majesty's principal secretaries of state, or secretary of the lord lieutenant, &c. of *Ireland*, in order and to the end that H. M. or such lord lieutenant, &c. may determine what may be fit to be done thereon; and it shall be lawful for H. M., by warrant under his sign manual, or for such lord lieutenant, &c. by order under his hand, or by warrant under the hand and seal of any one of his principal secretaries of state, or the secretary of such lord lieutenant, &c. either to direct that such alien shall be discharged or ordered out of the kingdom."

Mayors, &c. may detain aliens, and transmit to secretary of state an account of their proceedings.

§ 11. "If any certificate issued to any alien by virtue of this act shall be lost, mislaid, or destroyed, and such alien shall produce to one of H. M's. justices of the peace, from the officers of the customs so appointed as aforesaid, at the port where such alien shall have arrived, or from the office of one of H. M's. principal secretaries of state, or from the office of the chief secretary of the lord lieutenant, &c. of *Ireland*, a copy of the certificate so lost, mislaid, or destroyed, and shall make it appear to the satisfaction of such justice, that he or she is the person named in such certificate, and that the same has been lost, mislaid, or destroyed, without his or her wilful neglect or default, it shall and may be lawful for such justice, and he is hereby required to grant to such alien a fresh certificate, which shall be of the like force and effect as the certificate so lost, mislaid, or destroyed."

Justices shall grant certificates in lieu of such as shall appear to be lost, &c.

56 G. 3. c. 86.

Officer of the customs and magistrates to whom certificates shall be produced, shall transmit copies of entries and certificates to the secretary of state, &c.

§ 12. "Every such custom-house officer shall forthwith, and every magistrate or justice to whom any such certificate or account shall be produced or delivered as aforesaid, shall forthwith, after the same shall have been so produced or delivered as aforesaid, transmit, if in *G. B.*, to one of H. M's. principal secretaries of state, and if in *Ireland*, to the chief secretary of the lord lieutenant, &c. true and exact copies of all such entries, certificates, and accounts respectively, made by or delivered to any such custom-house officer, magistrate, or justice respectively, by virtue of this act."

No fee to be taken for granting certificates, on penalty of 10*l.*

Officers of the customs neglecting to make entry, or to grant certificates, &c. shall forfeit 20*l.*

§ 13. "All certificates herein-before required to be given by any inspector of aliens, or officer of the customs appointed for the purpose, or by any justice or justices of the peace, or other magistrates respectively, shall be given without any fee or reward whatsoever; and every such inspector of aliens, or officer of the customs, or magistrate or justice of the peace, or other person, who shall take any fee or reward, or sum of money, of any alien, for any certificate, or other matter or thing under this act, shall forfeit for every such offence the sum of 10*l.*: and every inspector of aliens, or officer of the customs, appointed for that purpose as aforesaid, who shall refuse or neglect to make any such entry as aforesaid, or grant any certificate thereon, in pursuance of the provisions of this act, or shall knowingly make any false entry, or neglect to return the copies thereof, in manner directed by this act, shall forfeit for every such offence the sum of 20*l.*"

Penalty on persons forging, &c. certificates.

§ 14. "If any person shall wilfully forge, counterfeit, or alter, or cause to be forged, counterfeited, or altered, or shall utter, knowing the same to be forged, counterfeited, or altered, any certificate herein directed to be obtained, or shall obtain any such certificate under any other name or description than the true name and description of such alien, without disclosing to the person granting such certificate the true name and description of such alien, and the reason for concealing the same, or shall falsely pretend to be the person intended to be named and described in any such certificate; every person so offending, being lawfully convicted thereof, shall suffer imprisonment in the common gaol for any time not exceeding one year."

Ambassadors, &c. not to be deemed aliens.

Act not to extend to aliens not more than 14 years old.

Proof whether any person is or is not an alien, shall lie on the party.

§ 15. "No foreign ambassador or other public minister duly authorised, nor the domestic servants of any such foreign ambassador or public minister, registered as such according to the directions of the laws in force for that purpose, or being actually attendant upon such ambassador or minister, shall be deemed an alien within the meaning of this act: Provided also, that nothing in this act contained shall affect any alien, in respect of any act done or omitted to be done, who shall make it appear that he or she was not above the age of fourteen years at the time when such act was so done or omitted to be done: Provided always, that if any question shall arise, whether any person alleged to be an alien, and subject to the provisions of this act or any of them, is an alien or not, or is or is not an alien, subject to the said provisions or any of them, the proof that such person is or by law is to be deemed to be a natural-born subject of H. M., or denizen of this kingdom, or naturalized by act of parliament, or if an alien is not subject to the provisions in this act contained, or any of them, by reason of any exception contained in this act, or

which shall be expressed in any proclamation or order in council as aforesaid, or in any special warrant from one of H. M.'s principal secretaries of state, or from the lord lieutenant, &c. of *Ireland*, or his chief secretary as aforesaid, shall lie on the person so alleged to be an alien, and to be subject to the provisions of this act, some or one of them."

56 G. 3. c. 86.

§ 16. "In every case in which power is given by this act to commit any alien to gaol without bail or mainprize, it shall and may be lawful for any justices of H. M.'s courts of record at *Westminster* or in *Dublin*, or for any of the barons in *G. B.* or *Ireland*, being of the degree of the coif, or for the lord justice-clerk, or any of the commissioners of justiciary in *Scotland*, if upon application made he shall see sufficient cause, to admit such person to bail, he or she giving sufficient security for his or her appearance to answer the matters alleged against him or her."

Justices of the courts of Westminster or Dublin, &c. may admit aliens to bail;

§ 17. "It shall be lawful for any justice of the peace to admit any alien to bail, who shall have been committed by virtue of this act, such justice being authorised so to do by warrant of one of H. M.'s principal secretaries of state, or of the lord lieutenant, &c. of *Ireland*, or his chief secretary for that purpose, specifying the security to be taken by such justice."

as may also any justice, by authority of a secretary of state, &c.

§ 18. "Where any alien, who shall have been committed under this act to remain until he or she shall be taken in charge for the purpose of being sent out of the realm, shall not be sent out of the realm within two calendar months after such commitment, it shall in every such case be lawful for any of the justices of H. M.'s courts of record at *Westminster* or in *Dublin*, or for any of the barons in *G. B.* or *Ireland*, being of the degree of the coif, or for the lord justice-clerk, or any of the commissioners of justiciary in *Scotland*, or for any two of H. M.'s justices of the peace in any part of the U. K., upon application made to him or them by or on the behalf of the person so committed, and upon proof made to him or them that reasonable notice of the intention to make such application had been given to some or one of H. M.'s principal secretaries of state in *G. B.*, or to the lord lieut., &c. of *Ireland*, or his chief secretary, according to his or their discretion, to order the person so committed to be continued in or discharged out of custody."

When aliens have been in custody two months, in order to be sent out of the realm, the courts, &c. may, on proof that notice had been given of an application to a secretary of state, either continue in custody or discharge such aliens.

§ 19. "Aliens abiding in this kingdom, who have heretofore quitted their respective countries by reason of any revolution or troubles in *France*, or in countries conquered by the arms of *France*, shall not be liable to be arrested, imprisoned, or held to bail, or to find any caution for their forthcoming, or paying any debt, nor be taken in execution on any judgment, nor by any caption, for or by reason of any debt or other cause of action contracted or arising in any parts beyond the seas, other than the dominions of H. M., while such aliens were not within the said dominions of H. M.; and in case any such aliens shall have been or shall be arrested, imprisoned, or held to bail, or taken in execution on a judgment, or by caption, contrary to the intent of this act, such alien shall be discharged therefrom by order of any of H. M.'s courts of record at *Westminster* or *Dublin*, or of the court of session in *Scotland*, or of any judge of such courts in vacation time."

Aliens having quitted France on account of the late troubles, not liable to be arrested for debts contracted beyond seas, other than the dominions of his majesty.

56 G.3. c.86.

Penalties how to be recovered and applied.

§ 20. "All pecuniary penalties by this act imposed, exceeding the sum of 10*l.*, shall be recovered by action of debt, bill, plaint, or information, in any of H. M.'s courts of record at *Westminster* or in *Dublin*, or the court of great session in *Wales*, or the courts of the counties palatine of *Chester*, *Lancaster*, and *Durham*, or by action or summary bill or information in the courts of justiciary or exchequer in *Scotland*, as the case shall require, wherein no essoign, privilege, protection, or wager of law, nor more than one imparlance shall be allowed; and all pecuniary penalties by this act imposed, not exceeding the sum of 10*l.*, shall, on conviction of the offender upon oath before any justice of the peace of the county, riding, stewartry, city, town, or place where the offence shall be committed, be levied by distress and sale of the offender's goods and chattels, by warrant under the hand and seal of such justice, rendering to such offender the overplus (if any) on demand, after deducting the charges of such distress and sale; and for want of sufficient distress, such justice is hereby required to commit such offender to the common gaol of the county, riding, stewartry, city, town, or place where such offence shall be committed, for any time not exceeding six calendar months, and that no writ of certiorari or of advocation or suspension shall be allowed to remove the proceedings of the said justice touching the pecuniary penalties aforesaid, or to supersede or suspend execution or other proceeding thereupon."

Parishioners may be witnesses, though part of the penalty be given to the poor.

§ 21. "The inhabitants of any parish, township, or place, shall be deemed and taken to be competent witnesses, for the purpose of proving the commission of any offence against this act within the limits of such parish, township, or place, notwithstanding any part of the penalty incurred by such offence is given or applicable to the poor of such parish, township, or place."

Limitations of actions.

§ 22. "If any person or persons shall at any time be sued or prosecuted for any thing by him or them done or executed in pursuance or by colour of this act, or of any matter or thing therein contained, such action or prosecution shall be commenced within the space of twelve calendar months next after the offence shall be committed, and such person or persons shall and may plead the general issue, and give the special matter in evidence for his or their defence; and if upon trial a verdict shall pass for the defendant or defendants, or the plaintiff or plaintiffs shall become nonsuited, or shall discontinue his or their suit or prosecution, or if judgment be given for the defendant or defendants upon demurrer or otherwise, such defendant or defendants shall have treble costs to him or them awarded against the plaintiff or plaintiffs."

General issue.

Treble costs.

Powers given to the lord lieutenant, &c. not to extend to aliens arriving in Great Britain.

Jurisdiction of magistrates.

§ 23. "The powers and authority given by this act to the lord lieut., &c. of *Ireland*, or his chief secretary, or to the privy council of *Ireland*, shall not extend or be held or deemed to extend to the case of any alien arriving or being in that part of this realm or U. K. called *G. B.*; and the powers and authority given by this act to any justice of the peace, mayor, or chief magistrate of any city, town, or place, shall not extend or be construed to extend to give such magistrates any authority to act beyond the limits of their respective jurisdictions; any thing in this act contained to the contrary notwithstanding."

Continuance of this act.

Stat. 56 *G.*3. *c.*86. was continued by each of the stats. 58 *G.*3. *c.*96. 1 *G.*4. *c.*105. 3 *G.*4. *c.*97. for two years, and till the end of the

session of parliament in which the last granted term of two years should expire (viz. the session of 1824), if parliament should be then sitting; and by stat. 5 *G*.4. *c*.37. § 1. is further continued in force from the expiration thereof, for the term of two years.

56 G.3. c.86.

5 G.4. c.37.

§ 2. Enacts, that nothing in stat. 56 *G*.3. *c*.86. or this act contained, shall extend to any alien who shall have been continually residing in this kingdom for a period of seven years.

A manslaughter committed in *China*, by an alien enemy, who had been a prisoner of war, and was then acting as a mariner on board an *English* merchant ship, on an *Englishman*, cannot be tried here under an admiralty commission issued in pursuance of the 33 *H*.8. *c*.23. and 43 *G*.3. *c*.113. § 6. *Rex* v. *Depardo*, *O. B. Oct.* 1807. 1 *Taunt*. 26.

Manslaughter committed abroad by alien enemy.

Almanack.

[See stats.—9 *Ann*. *c*.23.—16 *G*.2. *c*. 26.—30 *G*.2. *c*.19.—21 *G*.3. *c*.56.—55 *G*.3. *c*.185.]

BY stat. 55 *G*.3. *c*.185. The stamp duties on almanacks granted by former acts are repealed, and the undermentioned duties granted in lieu thereof.

55 G.3. c.185.

	£	s.	d.
Almanack or Calendar, or any book or pamphlet serving the purpose of an Almanack or Calendar, for any time not exceeding one year - - - - - - - -	0	1	3
Almanack or Calendar, or any book or pamphlet serving the purpose of an Almanack or Calendar for several years; for each year for which such Almanack or Calendar shall be made or intended - - -	0	1	3
Almanack or Calendar perpetual, or any book or pamphlet serving the purpose of a perpetual almanack or calendar - - - - - - - - - - - - - - - - - -	0	10	0

N. B. By stat. 9 *A*. *c*.23. § 52. Calendars or perpetual almanacks, contained in any Bible or Common Prayer Book, are not liable to these duties.

9 Ann. c.23.

§ 26. Where an almanack contains more than one sheet, it shall be sufficient to stamp only one of the sheets.

Stat. 21 *G*.3. *c*.56. § 5. Every almanack shall be so printed that some part of the printing be upon the stamp.

21 G.3. c.56.

By stats. 16 *G*.2. *c*.26. § 5. 30 *G*.2. *c*.19. § 26. If any person shall sell, hawk, carry about, utter, or expose to sale any almanack unstamped, he shall, on conviction before one justice, on the oath of one witness, be committed to the house of correction, for any time not exceeding three months; and any person may apprehend and carry him before such justice; and on producing a certificate of the conviction under the hand of such justice he shall have a reward of 20*s*. to be paid by the receiver-general of the stamp duties.

16 G.2. c.26.
30 G.2. c.19.
Selling almanacks unstamped.

By stat. 55 *G*.3. *c*.185. § 8. "If any apprentice, journeyman, or servant of any printer or printers shall, without his or their

55 G.3. c.185.
Penalty on

55 G.3. c.185.

printers' apprentices, &c. for printing almanacks without stamps.

knowledge, print at his or their press any almanack or calendar, or any book or pamphlet serving the purpose of an almanack or calendar, liable to any duty imposed by this act, upon any paper not duly stamped for denoting such duty, it shall be lawful for any person or persons to seize and apprehend any such apprentice, journeyman, or servant so offending, and to carry him before any justice of the peace for the county, city, riding, division, or place where the offence shall be committed; and it shall be lawful for any such justice of the peace to commit any such apprentice, journeyman, or servant so offending, and being thereof convicted, by his own confession, or by the oath of one or more credible witness or witnesses, before such justice of the peace, to the house of correction, for any time not exceeding three calendar months."

Annuities.

[Stats. 29 *G.*3. *c.*41. — 48 *G.*3. *c.*142. — 49 *G.*3. *c.*64. — 52 *G.*3. *c.*129. — 56 *G.*3. *c.*53.]

29 G.3. c.41.

BY stat. 29 *G.*3. *c.*41. § 27. and other acts respecting life-annuities, oath of an annuitant's life may be made before a justice of the peace, who shall give a certificate thereof, without fee or stamp duty, in order to entitle such person to receive his annuity.

And by stat. 56 *G.*3. *c.*53. passed to amend the acts of 48 *G.*3. *c.*142. 49 *G.*3. *c.*64. and 52 *G.*3. *c.*129. for enabling the commissioners for the reduction of the national debt, to grant life-annuities:

56 G.3. c.53. Certificates of lives of nominees abroad, required.

§ 2. It is enacted, that in case any person who shall have been named as a nominee, on the continuance of whose life any annuity is to depend, shall, after his or her nomination, become resident in any kingdom or state in *Europe* in amity with H. M., or if he or she shall become resident in any other kingdom, state, or place beyond the seas, then and in every such case, a certificate that such nominee was living on the day specified therein, (being some day after any annuity depending upon his or her life shall have become due) granted under the hand and seal of the chief magistrate of any city, town, or place, or any other magistrate acting at the time as such, or for and in the place of any such chief magistrate, where such nominee may be then living, shall be deemed sufficient and effectual for proving the continuance of the life of such nominee, and for the purpose of enabling the person entitled to the annuity dependant upon the life of such nominee, to receive the same; provided no *British* minister, or consul, or governor, or person acting as such, shall be resident in such city, town, or place, although a *British* minister, or consul, or governor, or person acting as such, may be resident in the kingdom, state, or settlement wherein such nominee shall be then living.

Identity to be verified by affidavit or affirmation before justices in *England* and *Scotland*, and before

§ 3. Provided always, that to every such certificate as aforesaid, there shall be annexed an affidavit or solemn affirmation, made before any justice of the peace or magistrate in *England* or *Scotland* respectively, or if in *Ireland* before one of the barons of the exchequer there, by the person or persons entitled to the said annuity, or by the person applying to receive the same, on his,

her, or their behalf, that the matters contained in such certificate are, to the best of his or her belief, true; and that the person described or certified therein, is the nominee or one of the nominees on whose life or lives the annuity whereof such half yearly or other payment shall be claimed, doth depend.

56 G.3. c.53.

a baron in *Ireland.*

Apothecary. See Physicians.
Apparel. See Assault.

Appeal.

THE word *appeal* has two significations; it is either

1. An appeal of murder or other felony, *i. e.* a prosecution against a supposed offender by the party's own private action; prosecuting also for the crown in respect of the offence against the public. 2 *Haw. c.*23. § 1. Or,

2. More generally, the removal of a cause from an inferior court or judge to a superior; as from one or more justices to the quarter-sessions.

1. Appeals of murder, &c. abolished by *stat.* 59 *G.*3. *c.*46.

This mode of prosecution, which had almost fallen entirely into disuse, has been recently abolished by stat. 59 *Geo.*3. *c.*46. *passed* 22d *June* 1819; which, after reciting, "whereas appeals of murder, treason, felony, and other offences, and the manner of proceeding therein, have been found to be oppressive; and the trial by battel in any suit, is a mode of trial unfit to be used; and it is expedient that the same should be wholly abolished;" enacts, "that from and after the passing of this act, all appeals of treason, murder, felony, or other offences, shall cease, determine, and become void; and that it shall not be lawful for any person or persons, at any time after the passing of this act, to commence, take, or sue appeal of treason, murder, felony, or other offence, against any other person or persons whomsoever, but that all such appeals shall, from henceforth, be utterly abolished; any law, statute, or usage to the contrary in anywise notwithstanding."

59 G.3. c 46.

Appeals of murder or other offences to cease and determine.

§ 2. "And be it further enacted, that from and after the passing of this act, in any writ of right now depending, or which may hereafter be brought, instituted, or commenced, the tenant shall not be received to wage battel, nor shall issue be joined nor trial be had by battel in any writ of right; any law, custom, or usage to the contrary notwithstanding."

No tenant shall be received to wage battel, nor any trial be had by battel in any writ of right.

The last case of an appeal of murder was that of *Ashford* v. *Thornton*. In *M. Term,* 58 *G.*3. 1817, *William Ashford,* the eldest brother and heir-at-law of *Mary Ashford,* spinster, deceased, brought a writ of appeal against *Abraham Thornton,* for the murder of his said sister, of which offence the defendant had been tried and acquitted at *Warwick* summer assizes preceding, under circumstances of strong suspicion (though not absolutely conclusive) of his having ravished and afterwards thrown her into

a pit of water where the body was very recently found. The appellee upon being called upon to plead, pleaded "not guilty; and I am ready to defend the same by my body:" and thereupon taking his glove off, he threw it upon the floor of the court. The appellant afterwards delivered in a counterplea, to which there was a replication, a general demurrer and joinder therein. After very long and elaborate arguments, the court of K. B. held that the appellee had a right to wage his battel, the appellant not having brought himself within any of the established cases which entitle him to decline the wager of battel, namely, where the appellant is an infant, or a woman, or above 60 years of age, or where the appellee is taken within the mainour, or has broken prison, or where great and violent presumptions of guilt exist against the appellee, which admit of no denial or proof to the contrary. The appellee was afterwards discharged. *Ashford* v. *Thornton*, *E. T.* 1818. 1 *B.&Ald.* 405.

2. Of Appeals generally and of notice of appeal.

Appeal does not lie unless given by statute.

Rex v. *Hanson*, *E.* 2 *G.*4. 4 *B.&A.* 519. The rule of law is that although a *certiorari* lies unless expressly taken away, yet an appeal does not lie unless expressly given by statute.

Stat. 50 G.3. c.48. § 25. provides that any party aggrieved by the conviction under that act, who shall enter into a recognizance to appear at the next sessions, shall be at liberty to appeal to such sessions. Held, that this dispenses with the necessity of any notice of appeal; and that if the party duly enter into the recognizance, the sessions are bound to hear the appeal.

Rex v. *The Justices of Essex*, *H.* 1 & 2 *G.*4. 4 *B.&A.*276. Rule calling upon the defendants to show cause why a writ of mandamus should not be directed to them, commanding them to enter continuances, and hear the appeal of *John Wright* against the conviction of a magistrate under the 50 *Geo.*3, *c.*48. § 4., by which *John Wright* was convicted in a penalty for carrying more luggage than is allowed by the act. The said *J. W.* had, within 14 days, entered into a recognizance, as required by the act, to prosecute his appeal against the conviction, and had given notice of appeal to the magistrate; but not to the informer. By the practice of the sessions for the county of *Essex*, eight days' notice of appeal is required to be given, in all cases, by the appellant to the respondent. It was objected at the sessions that the practice not having been complied with in this particular, the appellant was not entitled to be heard; and the sessions allowed the objection, and dismissed the appeal. On moving for the R. N. the case of *Rex* v. *The Justices of Kent* (*a*) was relied on; and it was contended that the entering into the recognizance before the magistrate, dispensed with the necessity of giving notice of appeal. After cause shown against the rule, *Bayley* J. said, I am of opinion that the sessions ought to have heard this appeal. Wherever the legislature has deemed a notice of appeal to be necessary, they have in express terms prescribed such notice; but here, by the 50 *G.*3. *c.*48. § 25., it is expressly provided, "that any party aggrieved by the conviction, who shall within 14 days enter into a recognizance to appear at the next sessions, shall be at liberty to appeal at the next general quarter sessions of the peace to be holden for the county." The act of parliament, therefore, does not require any notice of appeal; and inasmuch as the party convicted had entered into a recognizance to prosecute his appeal at the next sessions, the informer must have known that it was the intention of the party convicted to appeal,

(*a*) MSS. of M. & S. *Not yet reported.*

and any further notice was therefore unnecessary. I think therefore that this rule ought to be made absolute. *Best* J. concurred. *Abbott* C. J. and *Holroyd* J. had left the court. R. A.

Where the notice of appeal is not required to be in writing, by the clause in the statute which directs it to be given, a parol notice is sufficient. Where, therefore, the sessions refused to receive evidence of a parol notice of appeal against an order of filiation, the court granted a mandamus.

Rex v. *The Justices of Salop*, *T.* 2 *G.*4. 4 *B.*&*A.* 626. Rule calling upon the defendants to show cause why a writ of mandamus should not be directed to them, commanding them to cause continuances to be entered, and hear the appeal of one *Joseph Oliver* against an order of two magistrates, under stat. 49 *G.*3. *c.*68. § 5., whereby the said *J. O.* was adjudged to be the reputed father of a bastard child. It appeared by the affidavits upon which the rule was obtained, that the order in question was made on the 30th *January*; that immediately upon the order being made the appellant entered into the recognizance required by the statute, before the justices who made the order; and that a regular notice of appeal to the quarter sessions, to be holden on the 30th *April*, was served on the 9th *April*, upon the churchwardens and overseers of the parish on whose behalf the order was made. When the appeal was called on for trial at the sessions, it was objected by the respondents, that no notice had been given to the justices who made the order, of the intention to bring the appeal, and of the cause and matter thereof, as required by the statute; and upon the sessions holding such notice to be necessary, the appellant offeerd to prove, that, previous to entering into the recognizance, he gave a parol notice to the justices who made the order, of his intention to appeal against it, and of the cause and matter of such appeal; but the sessions would not allow such notice to be proved, and dismissed the appeal. The rule was obtained upon two grounds; first, that the entering into the recognizance before he justices who made the order dispensed with the necessity of giving them a notice of appeal; and, secondly, that in case a notice to the justices was necessary, the sessions ought to have received the evidence of a parol notice, which was tendered by the appellant. On showing cause, the cases of *Rex* v. *The Justices of Leeds*, 4 *T.R.* 583., and *Rex* v. *The Justices of Essex* (*ante*, p. 114.) were cited.—*Bayley* J. I am of opinion that in this case the sessions ought to have received the evidence of the parol notice of appeal which was tendered by the appellant. It may be convenient, that a notice of appeal, particularly where it is a notice of the cause and matter of the appeal, should be in writing, and in many cases the statute giving the appeal requires that there should be a *written* notice; but we cannot say that a notice in writing is necessary where it is not required to be in writing by the clause in the statute, which directs a notice to be given. An appeal is usually allowed by statute on certain conditions; and when one of those conditions is, that the party appealing shall give a notice of his appeal, it would be to add a further condition, if we were to hold that such notice must be in writing. *Holroyd* J. concurred. *Abbott* C. J. and *Best* J. had left the court. R. A.

A notice in writing is not necessary unless so required by statute.

Where a statute gives an appeal the appellant giving reasonable notice to the other parties; such

Rex v. *The Justices of Surrey*, *H.* 2&3 *G.*4. 5 *B.*&*A.* 539. *R.N.* for a mandamus to the justices of *Surrey* to enter continuances and hear the appeal of *Andrew Barnet* against a conviction for gaming under 12 *G.*2. *c.*28. The defendant was convicted on the 6th *November* last, and entered into recognizances to appeal against it to the next quarter sessions. It was sworn on the one

notice need not be in writing, but a verbal notice, if reasonable as to time, is sufficient.

side, and denied by the other, that at the time of entering into recognizances his attorney gave a verbal notice to the informer of his intention to appeal. The defendant attended in order to prosecute his appeal at the last *January* sessions, when there having been no notice of appeal in writing, the court refused to hear the appeal. The 5th section of the act giving the appeal states, that "persons aggrieved may appeal, giving reasonable notice to the prosecutor and entering into recognizances," &c. It was contended that the sessions were to judge what was a reasonable notice of appeal, and they were of opinion that it must be a notice in writing.—*Sed per Abbott* C. J., We are of opinion that *where a statute requires reasonable notice to be given, it does not necessarily mean that the notice should be in writing, but only that as to time or number of days it should be reasonable.* Here, however, as the fact is disputed, we shall only grant a mandamus to the justices, commanding them to examine whether reasonable verbal notice has been given, and in that case to enter continuances and hear the appeal. Rule accordingly.

Where a statute requires reasonable notice, it does not necessarily mean that the notice should be in writing.

R. v. *Js. of Cumberland*, 1 *B.&Cr.*64. The operation of a general clause of appeal in an act of parliament cannot be excluded by inference only, without any declaration in the statute as to the matter in question.

Apples and Pears.

1 Ann. st. 1. c. 15.

STAT. 1 *Ann. st.* 1. *c.*15. after reciting § 1. Whereas apples and pears are frequently sold by measure, commonly called *water-measure*, the contents whereof are very uncertain; Enacts that therefore, for the future the said measure shall be round, and in diameter eighteen inches and a half within the hoop, and eight inches deep and no more, and so in proportion; and every measure, commonly called *water-measure*, by which apples and pears are sold, shall be heaped as usually: And whosoever shall sell or buy any apples or pears by any other measure shall forfeit 10*s*., half to the informer and half to the poor, on conviction on the oath of one witness, before one justice (or mayor), to be levied by the petty constable by warrant of the said justice, by distress and sale.

§ 2. But this shall not extend to any measure sealed and allowed by the fruiterers' company in *London*.

Concerning the robbing of orchards, see title Wood, Vol. V.

Apprehending Offenders. See Arrest, *post*.

Apprentices.

Concerning the Settlement of Apprentices, see title Poor.

§ I. *Who may take Apprentices.*
[5 El. c.4.—c.5.—1 J. c.17.—13&14 C.2. c.5.—54 G.3. c.96.]

II. *Who are compellable to be bound Apprentices.*
[5 El. c.4.]

III. *Binding.*
[5 El. c.4. — 5&6 W. c.21. — 9 & 10 W. c.25. — 2&3 Ann. c.6. — 8 Ann. c.9. — 9 Ann. c.21. — 12 Ann. st.2. c.9. — 18 G.2. c.22. — 20 G.2. c.45. — 31 G.2. c.11. — 5 G.3. c.46. — 16 G.3. c.34. — 17 G.3. c.50. — 23 G.3. c.58. — 35 G.3. c.30. — 37 G.3. c.90. — c.111. — 42 G.3. c.23. — 44 G.3. c.98. Sched.A. — 48 G.3. c.149. — 55 G.3. c.184.]

IV. *Binding and Assignment of Parish-Apprentices.*
[43 El. c.2. — 21 J. c.28. — 3 C. c.4. — 5 W. c.21. — 8&9 W. c.30. — 18 G.3. c.47. — 20 G.3. c.36. — 32 G.3. c. 57. — 42 G.3. c.46. — 51 G.3. c.80. — 54 G.3. c.107. — 56 G.3. c.139. — 4 G.4. c.25.]

V. *Registry of Parish-Apprentices.*
[42 G 3. c.46.]

VI. *Money given to bind out poor Apprentices.*
[7 J. c.3.]

VII. *Binding poor Apprentices to the Sea Service.*
[2&3 Ann. c.6. — 4 Ann. c.19. — 13 G.2. c.17. — 2 G.3. c.15. — 4 G.4. c.25.]

VIII. *Poor Apprentices bound to Chimney-Sweepers.*
[28 G.3. c.48.]

IX. *Assigning Apprentices.*

X. *Differences between the Master and Apprentice, and herein of discharging an Apprentice.*
[5 El. c.4. — 20 G.2. c.19. — 24 G.2. c.55. — 6 G.3. c.25. — 32 G.3. c.57. — 33 G.3. c.55. — 4 G.4 c.29. — c.34.]

XI. *Master dying.*
[32 G.3. c.57.]

XII. *Apprentice stealing his Master's Goods.*
[21 H.8. c.7. — 12 Ann. st.1. c.7.]

XIII. *Enticing away an Apprentice.*

XIV. *Setting up trades, and setting Persons to work at Trades.*
[5 El. c.4. — 54 G.3. c.96.]

[As to the *Enlistment of Apprentices* see Vol. III., title **Military Law.**

I. Who may take Apprentices.

BY stat. 5 *El. c.*4. § 25. Every person being an householder, and having and using half a plough-land in tillage, may take an apprentice above the age of ten years, and under eighteen, to serve in husbandry till twenty-one at the least, or till twenty-four, as the parties can agree: but vide 54 G.3. *c.*96. § 2. *post.*

5 Eliz. c.4. Householders in husbandry.

§ 26. Every person being an householder, and twenty-four years old at the least, dwelling in any city or town corporate, and exercising any art, mystery, or manual occupation there, may retain the son of a freeman, not occupying husbandry, nor being

Householders in trades in towns corporate to take for seven years.

5 Eliz. c.4.

a labourer and inhabiting in the same, or in any other city or town corporate, to serve and be bound as an apprentice, after the custom and order of the city of *London*, for seven years at the least, so as such apprenticeship do not expire before the apprentice shall be twenty-four years of age.

§ 40. The citizens of *London* and *Norwich* may take and have apprentices, as before this act.

In trades in market towns not corporate.

§ 28. Every person being an householder, and twenty-four years old at the least, and not occupying husbandry, nor being a labourer, dwelling in any market town not corporate, and exercising any art, mystery, or manual occupation, may have to apprentice the child or children of any other artificer, not occupying husbandry, nor being a labourer, inhabiting in the same or any other such market town in the same shire.

In any place.

§ 30. Any person using the art of a smith, wheelwright, ploughwright, millwright, carpenter, rough-mason, plaisterer, sawyer, lime-burner, brick-maker, bricklayer, tyler, slater, helier, tylemaker, linen-weaver, turner, cooper, miller, earthen-potter, woollen-weaver, weaving household cloth only, fuller, otherwise called tucker or walker, burner of oare and woad-ashes, thatcher or shingler, wheresoever he shall dwell, may take the son of any person as apprentice, albeit his parents have no land. Vide 54 *G*.3. *c*.96. § 2. *post*.

54 G.3. c.96.
5 Eliz. c.4.

By stat. 54 *G*.3. *c*.96. § 2. reciting, " whereas by the said statute [5 *Eliz. c*.4. *viz*. § 25—30. 41.] divers rules and regulations were enacted respecting the qualifications of persons entitled to take and become apprentices, and the term of years for which such apprentices should be bound, and as to the mode of binding such apprentices; and it was also enacted by the said statute, that all indentures, covenants, promises, and bargains of and for the having, taking, or keeping of any apprentice, otherwise thereafter to be made or taken, than is by the said statute limited, ordained, and appointed, should be clearly void in the law to all intents and purposes; and that every person that should from thenceforth take or newly retain any apprentice contrary to the tenor and true meaning of the said act, should forfeit and lose for every apprentice so by him taken the sum of 10*l*. And whereas it is expedient, that so much of the said recited act should be repealed; ' it is enacted, that so much of the said recited act shall be, and the same is hereby repealed, and that it shall and may be lawful for any person to take or retain or become an apprentice, though not according to the provisions of the said act; and that indentures, deeds, and agreements in writing, entered into for that purpose, which would be otherwise valid and effectual, shall be valid and effectual in law, the repeal of so much of the said act, as is herein last above-recited, notwithstanding.' "(*a*)

Repeal of part of 5 Eliz. c.4.

54 G.3. c.96.

Provided, § 4. That this act shall not extend to defeat, alter, or prejudice the custom, &c. of the city of *London* concerning apprentices, or the ancient custom, &c. of any city, town, corporation, or company, lawfully constituted; or any bye-law or regulation of any corporation or company.

(*a*) *Quære*. To how many and what parts of sections 25—30. does the above enactment apply? *Semble*, to all, see stat. 5 *Eliz. c*.4. in the Chronological Table of Statutes, prefixed to *Tyrwh*. and *Tyn*.'s Digest of the Statutes, p. xliii.

By stat. 5 *El. c.*5. § 12. Every owner of a ship or vessel, and every householder exercising the trade of the seas by fishing or otherwise, and every gunner, commonly called a cannoneer, and every shipwright, may take apprentices for ten years or under; and every apprentice so taken, being above seven years of age, shall be by the same covenants bound, or ordered and used to all intents, according to the custom of *London*, so that the covenant or bond of apprenticeship be made by writing indented, and *inrolled in the town* where the apprentice shall be inhabiting, if it be a town corporate, if not, then in the next town corporate, for which enrolment shall be paid not above 12d.

5 Eliz. c.5. Seamen.

Inrolled in the town, &c.] The indentures of a mariner's apprentice, bound under 5 *El. c.*5. § 12. must be inrolled in the next corporate town, according to the statute, in order to sustain an action of covenant, and not in the Trinity-house, according to the charter of that company; for the king cannot by his charter alter the place of enrolment, but it must be according to the direction of the statute; otherwise the covenants should be according to the common law, and the apprentices not bound by them. *Poulson's case*, 3 *Lev.* 389. 1 *Bott.* 634. *Barber* v. *Dennis*, 6 *Mod.* 69. 1 *Bott.* 527.

Enrolment of indentures, under 5 Eliz. c.5.

The provision, however, contained in this clause, is intended for the benefit of the apprentice, and as a check upon the master. Therefore, where the indenture was not enrolled in the town where the apprentice was then inhabiting, nor in the next corporate town to the habitation of the apprentice, pursuant to the statute 5 *El. c.*5. nor with the collector of the customs, pursuant to the 2&3 *Ann. c.*6. it was holden that the apprentice should not be prejudiced by the neglect of the master to enrol the indenture, although the stamp duties were thereby evaded. *Rex* v. *Gainsborough*, *Burr. S. C.* 586. 1 *Bott.* 635.

By stat. 5 *El. c.*4. § 33. 39. 45. Every person that shall have three apprentices in any the crafts of a clothmaker, fuller, sheerman, weaver, tailor, or shoemaker, shall keep one journeyman; and for every other apprentice above three, one other journeyman, on pain of 10*l.*; half to the king, and half to him that shall sue in the sessions or other court of record; or if it is in a town corporate, then to be applied as by the charter.

5 Eliz. c.4. Number restrained in certain cases.

By stat. 1 *J. c.*17. § 3. 5. No hatmaker shall have above two apprentices at one time, nor those for any less term than seven years, on pain of 5*l.* a month; half to the king, and half to him that shall sue in any court of record: But this not to extend to his own son, in his own house, so as he be bound by indenture for seven years, and his term not to expire before he be twenty-two years of age.

1 Jac. c.17. Hatmakers.

By stat. 13&14 *C.*2. *c.*5. § 18. Weavers of stuffs in *Norfolk* and *Norwich*, that shall employ two apprentices, shall also employ two journeymen; and no master shall have above two apprentices, or any week boy to weave in the said trade; on pain of 5*l.* a month to the king.

13&14 C.2. c.5. Weavers of stuffs in Norfolk, &c.

II. Who are compellable to be bound Apprentices.

By stat. 5 *El. c.*4. § 35. If any person shall be required by any householder using half a plough-land at least in tillage to be an

Who shall be bound.

5 Eliz. c.4.

apprentice and to serve in husbandry, or in any other art, mystery, or science before expressed, and shall refuse so to do, then, on complaint of such housekeeper to one justice (or head officer) he shall send for the person refusing; and if he shall think the said person meet to serve, and such person refuse to be bound, he may commit him to ward, there to remain until he be contented, and will be bound.

At what age.

But by § 36. no person shall be bound to enter into any apprenticeship, other than such as be under the age of twenty-one years.

Upon the whole, the aforesaid directions about the value of the parent's estate, and such like, are become entirely obsolete, and of no use, and therefore had better be repealed. The restrictions were originally intended (as appears by the statute 9 *H.*4. *c.*17.) for the encouragement of husbandry, by reason of the scarcity of labourers in ancient time. And this statute of the 5 *Eliz.* is only a re-enacting, as it were, of former statutes, and expresseth, that any person being an householder may take apprentice the son of any freeman, *not occupying husbandry, nor being a labourer.*

III. Binding. (*a*)

54 G.3. c.96. Binding may be otherwise than by 5 Eliz. c.4.

By stat. 54 *G.*3. *c.*96. § 2. It shall be lawful for any person to take or retain or become an apprentice, though not according to the provisions of 5 *El. c.*4., and indentures, deeds, and agreements in writing entered into for that purpose, which would be otherwise valid, shall be valid in law, the repeal of so much of the said act as is herein last above-recited (*b*) notwithstanding.

Penalties on 5 Eliz. c.4. how distributed.

By stat. 5 *El. c.*4. § 39. One half of all forfeitures mentioned in this act, other than such as are expressly otherwise appointed, shall be to the king, and the other half to him that shall sue in the sessions or other court of record: or (§ 45.) if it is in a city or town corporate, then to the use of such city or town as other fines, &c. levied within such city, &c. by any charter granted to such city, &c.

Binding to be by deed:

1. One cannot be bound an apprentice without deed. *Int. Par. Castor and Aickles*, 1 *Salk.* 68.

by indenture:

2. And by stat. 5 *El. c.*4. it was to be by indenture. An apprentice can only be bound by indenture. *Per Ld. Kenyon* C. J. 3 *Esp.* 189.

not by deed poll.

Smith v. *Birch*, *M.* 1 *G.*2. 1 *Sess. Cass.* 222. 1 *Bott.* 528. An action was brought against the defendant for enticing away and detaining the plaintiff's apprentice, who had agreed by writing to serve the plaintiff for seven years. Upon evidence it appeared that the style of the writing began, "*This indenture, &c.*" but in fact the parchment was *not indented*, but was a deed poll. On exception taken to the deed, it was insisted that the young man was not an apprentice, because he was not bound by an indenture. An infant can be bound no other way than as the statute of 5 *El.*

(*a*) See Settlement by Apprenticeship, Vol. IV. § 11. for the cases upon this subject more fully set out.

(*b*) *Viz. comm. semb.* 5 *Eliz. c.*4. *sess.* 25—30; and certainly the whole of § 41. which is recited in the beginning of the above section, see *ante*, 118. & n. (*a*).

directs, which is by indenture, and nothing can make this good. The deed cannot now be indented, for that would be a forgery. Therefore, unless the plaintiff shows the apprentice to be of full age at the time of signing such deed, he cannot be accounted his apprentice, and by consequence no action can lie for detaining the apprentice; neither can the plaintiff prove him to be his *servant* by his deed, for he has declared for an *apprentice*, and must prove him so to be. Therefore the plaintiff was nonsuited.

Exception. 31 G.2. c.11. But by stat. 31 *G.2. c.*11. A binding by deed not indented is sufficient for the purpose of enabling the person bound to gain a settlement.

Agreement to execute indenture. An *agreement to execute* an *indenture* of apprenticeship was held not to constitute a sufficient binding under 5 *Eliz. c.*4. though a service of seven years had been performed under it. *Rex* v. *Stratton, Burr. S.C.* 272. 1 *Bott.* 530.

Of course a parol binding cannot constitute an apprenticeship. *Rex* v. *Mawman, Burr. S. C.* 290. 1 *Bott.* 531. *Rex* v. *Ditchingham*, 4 *T. R.* 769. 2 *Bott.* 377.

Infants. Infants may bind themselves. *Newbury* v. *St. Mary's, Reading*, 2 *Bott.* 363. *Rex* v. *Saltern*, 1 *Bott.* 613.

And the master may be an infant. *Rex* v. *St. Petrox, Dartmouth.* 2 *Bott.* 377. 4 *T. R.* 196.

And if the binding be *bonâ fide*, the master's condition is immaterial. *Rex* v. *St. Margaret's, Lincoln*, 1 *Bott.* 610.

The person bound, if a voluntary binding, must be a party. If in the case of a voluntary binding, the person bound be an infant, he must be a party to the indentures, or he will not be bound by them; and if he be an adult, he must also be a party. *Rex* v. *Cromford*, 8 *East*, 25. *Rex* v. *Chesterfield*, 1 *Bott.* 527. *Rex* v. *Ripon*, 9 *East*, 295.

Non-execution by the master. *Rex* v. *Fleet, Cald.* 31. 2 *Bott.* 371. This was a question of settlement, and it appeared that the pauper, a parish apprentice, was bound by indentures; that the original indenture was properly executed by the parish officers, and allowed by two justices. The counterpart was also allowed by the justices, but neither the indenture nor counterpart was executed by the master. The master accepted the indenture and the pauper, and considered him as his apprentice. And upon this case there arose a question, whether it was necessary under 8 & 9 *W.*3. *c.*30. § 5. (*post*, § iv.) that the master should have executed a counterpart to enable the pauper to gain a settlement?—Lord *Mansfield* C. J. said, the binding was authorised by 43 *Eliz. c.*2. § 5. long before the act requiring a counterpart; that the statute of *W.*3. only compelled persons to receive poor apprentices, but did not in other respects confirm the power of binding, which was already fully established.—*Aston* J. said that it had been so determined in *Rex* v. *St. Peter's on the Hill*, 2 *Bott.* 367. In which last case it was decided, that if the apprentice himself be bound, the execution by the master is not actually necessary, but the indenture shall be valid without it.

Non-execution by the apprentice. Nor is it necessary that *such* a deed should be executed by the apprentice, where he has served under the indentures. *Rex* v. *St. Nicholas, in Nottingham*, 2 *T. R.* 726. 2 *Bott.* 373. *Rex* v. *Woolstanton*, 1 *Bott.* 606.

Infants binding themselves.

It seems clearly agreed, that, by the common law, infants or persons under the age of 21 years cannot bind themselves apprentices, in such manner as to entitle their masters to an action of covenant, or other action, for departing the service, or other breaches of the indentures; which makes it necessary, according to the usual practice, to get some of their friends to be bound for the faithful discharge of their offices according to the terms agreed on. 4 *Bac. Abr.* 562. *tit. Master and Servant.*

But if an infant of five years of age, or other person who is not *potens in corpore*, be retained, and serve in the best manner he can, his master must pay him his wages. *Dalt. c.*58. *p.*141. *Bro. tit. Labour*, 46. 4 *Bac. Abr.* 562.

5 Eliz. c.4. Infant bound apprentice compellable to serve.

By stat. 5 *Eliz. c.*4. § 42. and 43. because there hath been, and is some question and scruple moved whether any person, being within the age of 21 years, and bound to serve as an apprentice in any other place than the city of *London*, shall be bound, accepted, and taken as an apprentice, it is enacted, that every such person who shall be bound by indenture, to serve as an apprentice, in any art, science, occupation, or labour, according to this statute, albeit he be within the age of 21 years, shall be bound as amply to every intent as if he were of full age at the time of making the indentures.

But although an infant may voluntarily bind himself apprentice, and if he continue apprentice for seven years, he may have the benefit to use his trade; yet neither at the common law, nor by any words of the statute, a covenant or obligation of an infant for his apprenticeship, shall bind him; but if he misbehave himself, the master may correct him in his service, or complain to a justice to have him punished, according to the statute. But no remedy lieth against an infant upon such covenant. *Gilbert* v. *Fletcher*, *Cro. Car.* 179. 1 *Bott.* 527.

But if his father, or other person, doth covenant for him, such covenant shall bind the father, or such other person; as in the case of *Whitley* v. *Loftus*. In the indenture of apprenticeship the father covenanted to pay the apprenticeship-money; the son covenanted to account for his master's goods; and in the conclusion, the father and son each bound themselves for the true performance of all covenants and agreements therein. By the Court: The end of binding the father was to answer the wrong which might be done by the son to his master, therefore the father must be obliged for his son's true performance of the articles; and the covenant that each did bind himself must be so, where the son is bound to perform the thing for which the covenant was made; and this clause is usually inserted that the covenants may be taken distributively, to wit, that each of the covenantors should perform his part; and this makes the covenant of the son bind the father, who covenanted for him as well as for himself. 8 *Mod.* 190. 1 *Bott.* 528.

So in *Branch* v. *Ewington*, *Doug.* 518. Action of covenant by the master against the father of the apprentice: the indenture was in the common form of the statute, and for the true performance of all and every the covenants, each of the said parties bound himself to the other. The breach assigned was, that the apprentice had absented himself from the service. Lord *Mans-*

field C. J. said, nothing was clearer than that the father was bound for the performance of the covenants by the son. 1 *Bott*. 535. *S. C.* and see 1 *B.* & *Cr.* 469, 470. *Winston* v. *Linn*, *infra*.

Covenant upon an indenture of apprenticeship, by the master against the father; breach, that the apprentice absented himself from the service; plea, that the son faithfully served till he came of age, and that he then avoided the indenture: Held, that this was no answer to the action.

Cuming v. *Hill*, *M*. 60 *G*.3. 3 *B* & *A*. 59. Action of covenant on an indenture of apprenticeship, in the common form, by the master against the father of the apprentice. The breach assigned was, that the apprentice had absented himself from the service. Plea, that the apprentice, at the time of making the indenture, was an infant, of the age of seventeen years; and that on the 20th *October*, 1818, he attained his full age of twenty-one years, until which time he faithfully served the plaintiff, according to the meaning of the indenture, and after he had attained the age of twenty-one years, he, on the 21st *October*, 1818, made void the indenture, and quitted the service of the plaintiff, as it was lawful to do under the statute 5 *Eliz*. To this plea there was a general demurrer. In support of the demurrer, *Branch* v. *Ewington*, 2 *Doug*. 518. *ante*, 122. was cited.

Abbott C. J. I am of opinion that the father is liable to this action; he covenants that the son shall faithfully serve: the avoidance of the apprenticeship by the son during the term cannot discharge the father's covenant. The indenture of apprenticeship has existed in this form for more than a century, and has been in universal use. A construction has been put upon the instrument in a court of law, in the case cited from Douglas. I do not see any reason to doubt the propriety of that decision, and I think, therefore, upon principle as well as upon authority, that the defendant is answerable in this action. *Bayley* J. I may bind myself that *A. B.* shall do an act, although it is in his option whether he will do it or not. The father here binds himself that the son shall serve seven years. It is no answer in an action brought against the father, for the breach of that covenant, for him to say, that it was in the option of the son whether he would serve or not. If the son does not choose to do that which the father covevanted he should do, the covenant is then broken, and the father is liable. *Holroyd* and *Best* Js. concurred. Judgment for the plaintiff.

Apprentice running away and enlisting, the master, though refusing to receive him again, is not compellable to return any part of the fee.

Cuff v. *Brown and others*, *Exch. Sitt. after M. T.* 58 *G*.3. *cor. Richards* C. B. 5 *Price*. 297. Where a bill for 100*l*., payable at the end of three years, was given upon entering into an agreement for the articling of an apprentice for the term of five years at the end of three years, and the deed was executed immediately for a term of eight years; but before the end of the three years, the apprentice, of his own accord, and without any misconduct on the part of the master, ran away, and enlisted for a soldier. Upon his return, after some time, and offering to renew his services, the master was at first inclined to do so, but on hearing of some other of his misconduct refused to receive him (*a*), and upon the bill being put in suit by a *bonâ fide* holder, the Court refused to grant an injunction: the premium was a consideration applying to and extending over the whole term of eight years; and as the master performed his contract until it was put an end to by the apprentice, he was entitled to the money arising from the note, as much as if the premium had been paid in money. Upon the objection

(*a*) See *Winstone* v. *Linn*, post, 124.

that the deed was not according to the agreement, the Court held that there was no contradiction between them.

Master is bound by his covenant to instruct his apprentice, though he absent himself for a short time, as three days.

Winstone v. *Linn*, *H.* 1823. 1 *B.* & *Cr.* 460. In a declaration on a covenant in an apprentice's indenture, to instruct, &c. charging generally a refusal to instruct, and that on 13th *July* he compelled the apprentice to quit the service: *Plea*, first, negativing the breach before the 10th *July*, and issue thereon: and secondly, as to so much of the breach alleged after that day, the refusal and absenting from service of the apprentice. *Replication*, that after such refusal, to wit, on the 13th *July*, he returned and offered himself to the defendant, who refused, &c. Upon *special demurrer* the court of K.B. held, First, That the replication showing only the circumstances of the defendant's compelling the apprentice to leave the service, which was the *gravamen* laid in the declaration, it was no departure. Secondly, That the replication did not narrow the general claim stated in the declaration, so as to be a discontinuance of the action as to any part, the plaintiff's claim not being one entire claim, but divisible, and covering every part of the time during which the master refused to instruct, &c. Thirdly, That the covenant of the master to instruct is an independent covenant, and that it cannot be put an end to by the disobedience or misconduct of the apprentice. The master having his remedy in that case at common law by action for breach of the covenants. If an unreasonable time had elapsed before the offer of the apprentice to return to the service, it lay upon the defendant to have rejoined so.

Time.

Stat. 5 *Eliz.* *c.*4. § 25., which directed the binding of apprentices to be by indenture for seven years at least, only rendered indentures, by which the party is bound for less than seven years, voidable by the parties themselves, and not void. *Rex* v. *St. Nicholas, Ipswich*, 1 *Bott.* 530. and see now 54 *G.* 3. *c.*96. § 2. *ante*, p. 120.

Apprentice absconding.

But if one bound apprentice during infancy abscond when he is of full age, he does not thereby avoid the indentures. *Rex* v. *Evered*, *K. B. T.* 17 *G.*3.——See this case cited *per Lord Ellenborough* C. J. in delivering the judgment of the court in the following important case of *Gray* v. *Cookson* and *Clayton*, *T.* 52 *G.*3. 16 *East*, 13. ——.

Gray v. Cookson & Clayton.

This was an action of trespass, in which the first count of the declaration charged that the defendants assaulted the plaintiff, and without reasonable or probable cause committed him to the house of correction, and kept him there until he sued out a writ of habeas corpus, by which he was removed from thence to and before the court of *K. B.*, and was afterwards by that court discharged from the imprisonment; by means of which he was injured in his business of a woollen draper, and put to expence, &c. There were other counts, stating the assault and imprisonment more generally. The defendants (who were justices of the peace, acting as such in this transaction) pleaded the general issue. At the trial before *Chambre* J. at *Newcastle*, the plaintiff, a woollen draper at *Newcastle*, after proving the regular notice to the defendants of the process, and the service of it within the time limited by law, proved the habeas-corpus writ, directed to the keeper of the house of correction, tested the 23d of *January*, 1810, by virtue of which he was brought up before this court, with the original warrant of his commitment for one calendar

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month, as an apprentice, for having absented himself without his master's consent. This warrant had been issued by the defendants, whose signatures to it were admitted; and on the production of it, this court had before discharged the plaintiff. But it also appeared, that after the first warrant of commitment had been delivered with the plaintiff to the keeper of the house of correction, on the 17th of *January*, 1810, he had received another warrant of commitment on the 20th, and that he had both those warrants at the time of his bringing the plaintiff before this court in obedience to the habeas-corpus; but that in consequence of advice by the plaintiff's attorney, he had only produced to the court the first warrant. It was also proved, that when the parties were before the magistrates on the 17th of *January*, previous to the commitment, *Spencer*, the master of the apprentice *Gray*, insisted upon his return into his service for the remainder of his term; and that on the plaintiff's part it was insisted, that the indenture which had been laid before the defendants was at an end. That Mr. *Cookson*, the mayor of *Newcastle*, then asked the plaintiff if he would return into *Spencer's* service; and he refusing, the first warrant of commitment was filled up and executed, and the plaintiff was sent away in custody. At the close of this evidence it was objected, on the part of the defendants, that an action of *trespass* was not maintainable, since the statute 43 *G*.3. *c*.41. (*a*) which protects magistrates from actions in this form for mistakes committed by them in the execution of their duty: but the learned judge doubting whether the statute extended to this case, where there had been *no conviction quashed*, but the party had been discharged on the ground of the illegality of the warrant of commitment, issued without any information on oath in the presence of the party so committed, directed the cause to proceed; with liberty to the defendants to move the court to enter a nonsuit. Thereupon the defendants called a witness, who produced the conviction (hereafter stated), which he also proved to have been drawn up and signed on the 10th of *August*, 1810, after the commencement of this action, which was on the 16th of *July* preceding. It was also proved that *Spencer*, the master, was sworn to the truth of his information, upon his application to the magistrates, before the plaintiff was apprehended upon the warrant then granted. That when the plaintiff was brought before the magistrates, he was informed of the nature of the charge made by *Spencer* against him, of absenting himself from his master's service; but neither of the witnesses would swear that any oath was administered to *Spencer* in the presence of the plaintiff, though one of them believed that it had, and spoke with certainty to the fact, that the former information was read over to the plaintiff, and the indenture was then produced by *Spencer*, and the indorsement on it was pointed out. And it was also in proof that the plaintiff, at the time of the complaint made, had a shop in *Newcastle*, where he was carrying on the business of a woollen draper; the following exhibits were also proved: 1. An indenture of the 16th of *June*, 1808, between the plaintiff, a minor, and his father, of one part, and *William Spencer*, of the town and county of

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(*a*) See *Massey* v. *Johnson*, 12 *East*, 67.

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Newcastle-upon-Tyne, woollen draper, of the other part; whereby the plaintiff, with the consent of his father, bound himself an apprentice to *Spencer* in his trade for three years and nine months from the day of the date, to become void on the death of the father before the end of that period. On the 17th of *April* 1809, the following indorsement was put upon the indenture; "I agree to cancel this indenture as against *John Gray* and *William Gray* his son, *provided the said William Gray makes no engagement* or enters into any person's service in the town of *Newcastle-upon-Tyne;* in such case this indenture to remain valid, and the present agreement to be void. As witness my hand this 17th of *April* 1809, *William Spencer*." 2. A notice from *Spencer* after that indorsement, and after the plaintiff had set up in business in *Newcastle-upon-Tyne*, but before the application to the magistrates, requiring the plaintiff to return to him and serve out the remainder of his time. 3. The information and complaint upon oath of *Spencer*, taken before the defendants on the 17th of *January* 1810, stating that the plaintiff, his indentured apprentice for a term not expired, had in his service been guilty of divers misdemeanors, miscarriages, and ill-behaviour towards the informant, and particularly that the plaintiff had absented himself from the service of the informant without his consent and without just cause (upon which the defendants, on the same day, issued their warrant for the plaintiff's apprehension to answer that complaint, which was also in proof.) 4. The conviction bearing date the 17th *January* 1810, which stated on that day *W. Spencer* came before the defendants, justices, &c. and informed them that *W. Gray*, the indentured apprentice of the informant for a term yet unexpired, had *in his service been guilty of divers misdemeanors, miscarriages, and ill-behaviour* towards the informant, and particularly that he *W. G. had absented himself from the service of the informant without his consent, and without just cause.* Whereupon *W. Gray* afterwards on the said 17th of *January* 1810, being duly brought before the said justices in the presence of *W. Spencer* to answer and make his defence to the charge, &c. *admitted that he had absented himself from the service of the said W. S.*, but said further in his defence that the indenture of apprenticeship, under which he was so bound, *had been agreed to be cancelled,* and that the said *W. S. had agreed to let him leave his service,* and had repeatedly told him that he, *W. S.*, had far too many people in his shop, a great many more than he had employment for, and had often expressed to him, *W. G.*, that he might have his liberty; on account of which they had agreed to part, and *W. G.* produced *an unstamped indorsement, signed by W. S., but not sealed,* made on the said indenture of apprenticeship, (which was set out). The conviction then stated, that it appeared to them (the justices) by the indenture, that no sum was paid to *Spencer*, and that *Spencer* deposed that *W. G.* had *made an engagement* in the town of *Newcastle-upon-Tyne, by setting up the trade there of a woollen draper.* Whereupon the justices convicted *W. Gray* of the offence charged against him, according to the form of the statute, and adjudged him to be committed to the house of correction in and for the said town and county, for one calendar month. And he was accordingly committed on the same day. 5. The second warrant of commitment spoken of as having been received by the keeper of

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the house of correction on the 20th of *January* 1810; which bore date as of the 17th, the day on which the plaintiff was committed. The learned judge, on summing up the evidence to the jury, advised them, if they found for the plaintiff, (as he thought they should, subject to the question of law,) to give moderate damages, as there was no reason to suppose that the defendants had acted intentionally wrong; and they found a verdict for the plaintiff with 120*l.* damages. This case was discussed upon a motion for setting aside the verdict and entering a nonsuit, or for granting a new trial, (which was made in last *Michaelmas* term,) and several points were made. *First*, it was contended on the part of the defendants, that the production of a subsisting conviction was conclusive in an action of trespass, particularly since the statute 43 *Geo.*3. *c.*141.; which assuming that a subsisting conviction would protect the convicting magistrates in a collateral action, provides that even in the case of a conviction *quashed*, they shall only be liable to damages in an action on the case; *Strickland* v. *Ward* (7 *T. R.* 633.) was referred to, and *Massey* v. *Johnson*, (12 *East.* 74.), for the construction of the statute, and it was insisted that to make convicting magistrates trespassers, it must be shown that they had no jurisdiction as to the subject-matter of the conviction, for if they had, their judgment was decisive on the fact. But if there were any doubt of this, the action of trespass, it was contended, was taken away by the late statute, which though it only provides in terms for the case where *a conviction shall have been quashed*, yet must necessarily be taken to extend to all cases where a magistrate, having power to convict, had actually made a conviction: otherwise he would be placed in a better condition where his conviction, being bad, had been quashed, than where he had made a good conviction: a distinction which the legislature could never have contemplated. With respect to the period when the conviction was formally drawn up, after it had been in fact made, it was not considered in *Massey* v. *Johnson* as material; but that it was sufficient to draw it up at any time before it was given in evidence in defence of the magistrates in any collateral proceeding. *Contra*, it was insisted that the conviction, shown to have been drawn up in its present form so long after the time when it purports to have been made, and after proceedings had upon the commitment in execution of it before this court, was too late, and could not be resorted to as evidence to defend the magistrates against this action. That though there was no time limited by statute for drawing it up, it ought to be done within a reasonable time, and at all events before the next practicable quarter sessions after the adjudication, to which court all convictions were properly returnable (*a*) for the purpose of being filed. But if an indefinite time were to be allowed, no person would be safe in bringing an action, however informal the instrument under which he was committed, as a more regular conviction might afterwards be drawn up, and antedated to the time of the commitment. [*Bayley* J. If the magistrate do not return his conviction to the sessions, may not the party apply for a mandamus?] That would not remedy the mischief in many cases. [Ld. *Ellen-*

(*a*) *Rex* v. *Eaton*, 2 *T. R.* 285. *Rex* v. *Barker*, 1 *East.* 188. were cited.

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borough C. J. The formal conviction, when issued, would properly bear date at the time when in fact it took place; and will not the court give credit to it, as to a conviction made at that time, when produced in a collateral proceeding, such as the action of trespass, however they may enquire of the time upon any other occasion when the conviction is directly impeached?] The fact of the conviction itself is traversable, and therefore it is not strictly a record. Before the act of the 7 *J*.1. *c*.5. (made perpetual by 21 *J* 1. *c*.12.) enabled justices of the peace, sued for acts done by virtue of their office, to plead the general issue, they could only have justified specially by pleading all the facts necessary to show a legal conviction, and that they thereupon convicted the plaintiff; and the plaintiff might have taken issue upon any one fact thus set out; and every fact necessary to prove the justification must have been shown at the trial to have existed when the action commenced; amongst others, the conviction itself. — Ld. *Ellenborough* C.J. When the conviction is produced at the trial as of the date when it took place, it would so appear; and it still comes to the same question, whether the court in a collateral enquiry will look out of the record of conviction for the time when it took place: but I think we ought to give credit to it. Then as to the objection upon the statute 43 *Geo*.3 *c*. 141., to the form of the action, that act applies only to the case of a conviction quashed. Magistrates were before protected in an action of trespass by a subsisting conviction good upon the face of it; and the act meant to protect them still further to a certain extent in a case where before they were left unprotected by the quashing of the conviction. Even before this statute, I had always considered that if a conviction were produced at the trial which would justify the imprisonment, that was sufficient. It was next contended on the part of the plaintiff, that the justices in this case had no jurisdiction, and therefore that the conviction was a nullity: and *Crepps* v *Durden* (*Cowp*. 640.) was referred to, where trespass was maintained against a magistrate, who had convicted a baker by four several convictions, each in the penalty of 5*s*., for exercising his business on the same day, being a *Sunday*, when the act which gave the penalty had only made the exercising of any such calling on the *Lord's* day one entire offence, whether done in one or more instances on the same day. But Ld. *Ellenborough* C.J. and *Bayley* J. observed, that the objection in that case had appeared upon the face of the four convictions given in evidence, which showed that the plaintiff had been convicted of four several offences in exercising his calling of a baker on the same *Sunday*, when by law he could only be convicted of one such offence on the same day. By collating and bringing together the four convictions, it appeared that the justice of the peace had exercised a jurisdiction in respect of three of the convictions, which was not given to him by any law; for after the first conviction he was *functus officio*. It was then objected, first, that the stat. 20 *Geo*.2. *c*.19. §4. on which the conviction was founded, was impliedly repealed by the stat. 6 *Geo*.3. *c*.25. §1. giving to the master of an apprentice absenting himself from his master's service, a different compensation; upon the principle of the case of *John Caruthers*, 9 *East*, 44., that an affirmative statute, giving a new rule, repeals

Construction of stat. 43 G.3. c.141.

a prior statute concerning the same matter. *Secondly*, that the indenture of apprenticeship not being for seven years, as required by the stat. 5 *Eliz. c.*4. was void, and not merely voidable. But if voidable, then, *thirdly*, that it had been avoided by the apprentice, the plaintiff having quitted his master's service; for which *Guppy* v. *Jennings*, 1 *Anst.*256, was cited. These three objections were afterwards stated and answered fully by the court, which makes it unnecessary to say more of them in this place. But during the discussion upon the last point, the court desired to be pointed out the particular act of avoidance on which he meant to rely: to which it was answered at first, that when the apprentice was before Mr. *Cookson* the magistrate, he was asked whether he would return into his master's service, which he refused to do; and this, it was contended, was an election by the apprentice to avoid the indenture, which avoidance he might originate before the magistrates, independently of the prior act of leaving his master; for which he was then questioned, and which he insisted upon his right to do by virtue of the agreement between him and his master, indorsed upon the indenture. [Ld. *Ellenborough* C. J. asked how his refusal to return to his master, when asked by the magistrates, which did not appear upon the face of the conviction, could be taken notice of by the court as an original avoidance of the indenture. He observed that the case of *Crepps* v. *Durden* was only an authority for noticing what did appear upon the face of the conviction. The plaintiff might certainly shew that the magistrates had no jurisdiction, by any matter which appeared upon the face of the conviction.] In *Welch* v. *Nash*, 8 *East.*394—403. it was said by *Lawrence* J. that the justices cannot give themselves jurisdiction in a particular case by finding that as a fact, which is not the fact; and the court there held that the action of trespass lay against the party who justified under an order of justices for diverting a highway. [*Bayley* J. That was the case of an *order of justices*, and not of a *conviction*. The only act of avoidance relied on by the apprentice before the magistrates was the prior act of leaving his master's service, and neglecting to return when called upon, for which he was then questioned upon the complaint of his master, as stated in the conviction.] In this stage of the argument, it seemed to be the opinion of the court that reliance could not be placed on an act of avoidance which did not appear upon the face of the conviction. Ld. *Ellenborough* C.J. The defence made below to the action of trespass and false imprisonment, in which the plaintiff had recovered a verdict against the defendants for 120l., was founded on a conviction of the plaintiff by the defendants, who in their character of aldermen are justices of the peace for the town and county of *Newcastle-upon-Tyne*, and which conviction was given in evidence by them on the general issue, under the stat 7 *Jac.*1. *c.*5. The conviction was founded upon the stat. 20 *Geo.*2. *c.*19. §4., empowering two or more justices, upon application or complaint *upon oath* by any master or mistress against any *such* apprentice, (*i. e.* by reference to the third section, such apprentice upon whose binding out no larger a sum than 5l. of lawful *British* money was paid; which was the case here, as nothing was taken with the apprentice,) touching or concerning any misdemeanour, miscarriage, or ill behaviour in such his or her service; (which oath such jus-

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Judgment of the court.

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tices are thereby empowered to administer;) to hear, examine, and determine the same, and to punish the offender by commitment to the house of correction, &c. for a time not exceeding one calendar month. The first question which was argued in this case was, whether this provision of the statute 20 *Geo.*2. *c.*19. was repealed by implication by the statute 6 *Geo.*3. *c.*25. §1., which empowers the justices to oblige such apprentices absenting themselves before the expiration of their apprenticeships, to serve for such time as they shall be absent, or to make satisfaction for their absence; or, in default of giving security for such satisfaction, to commit them; but we thought that the remedy given by this statute to the master for the loss of his apprentice's service was cumulative, and did not repeal the penal provision of the statute 20 *Geo.*2. *c.*19. as applied to the misdemeanor itself. It was then contended that the conviction was bad, for want of any jurisdiction in the defendants, the convicting justices, on another ground, namely, that the indenture of apprenticeship was not warranted by the stat. 5 *Eliz. c.*4., under which the binding took place, not being for a term of seven years, as required by the 26th section of that statute; and all other indentures, made otherwise than by the statute is limited, being declared by § 41. of that statute to be "void in law to all intents and purposes." Perhaps, in order to raise this objection, it should properly have appeared on the face of the conviction, that the indenture was in fact made for a less term than seven years; which no where appeared; it may however be inferred from the conduct of the parties; the one of whom insisted upon an avoidance of the indenture by the act of the parties; the other resisting such avoidance; thereby by their mutual consent admitting that the indenture was in its original frame a *voidable* instrument; and it was admitted by the plaintiff's counsel on the authority of the *King* v. *The Inhabitants of St. Nicholas, in Ipswich, Burr. S.C.*91. 2 *Str.*1066., that the indenture was voidable only on this account, and not void. But it was further said by the plaintiff's counsel, that the indenture, so in its nature voidable, had been avoided by the plaintiff, the apprentice, before the conviction took place, and the fact of avoidance relied upon was an unstamped indorsement, signed by the plaintiff's master, but not sealed with his seal, made on the indenture of apprenticeship, in the words following, that is to say: "I agree to cancel this indenture as against *John Gray*, and *William Gray*, his son (*i. e.* the plaintiff,) provided the said *W. Gray makes no engagement*, or *enters into any person's service in the town of* Newcastle-upon-Tyne; in such case this indenture to remain valid, and the present agreement to be void. As witness my hand this 17th of *April*, 1809. *William Spencer*," (*i. e.* the master.) It appears by the evidence stated on the face of the conviction, that *William Gray* the apprentice had made an engagement in the town of *Newcastle-upon-Tyne*, by setting up the trade there of a woollen draper. And the question is, whether the fact last stated amounts to a breach of that agreement on the part of the apprentice which is contained in the proviso, and on the breach of which the indenture was to remain valid, and the agreement for vacating the same was to become void: in other words, whether the making an engagement in the town of *Newcastle-upon-Tyne*, by setting up the trade there of a woollen-draper (it not appearing on the

face of the conviction to have been the trade carried on by *Spencer*, the master,) be a *making an engagement in the town of* Newcastle-upon Tyne, within the meaning of this proviso; the stipulation against *making an engagement*, as coupled with the context of *entering into any person's service* in the town of *Newcastle-upon-Tyne*, in plain sense imports *an engagement of trade or business*, and seems to be equivalent to a stipulation, that he should neither engage in any business himself, nor be employed in any as servant to another within the town of *Newcastle-upon-Tyne*. And if that be, as we think it is, the true meaning of the stipulation contained in the proviso, then was the indenture unavoided at the time when the absence commenced, which is the subject of the conviction. And according to the case of the *K.* v. *Evered* (*K.B.T.* 17 *G.*3. *Cald.* 26 *S.C.*), with a MS. note of which I have been favoured, indentures, though voidable, cannot be avoided by merely doing that which is forbidden by, and in violation of them, as long as they continue at all in force. In that case two justices had committed one *Robert Collehall*, an apprentice, to *Shepton Mallet* bridewell, for running away from his master. Amongst other objections to the commitment was this, that the binding, being only for six years, was contrary to the stat. 5 *Eliz.* c.4. § 26., which required it to be for seven years at least, and that by § 41. all indentures otherwise made are void. That in the case of the *K.* v. *The Inhabitants of St. Nicholas, Ipswich*, (already referred to,) Lord *Hardwicke* had expressly adjudged that such an indenture was voidable by the parties. That the apprentice had in this case done every thing in his power to avoid the indenture, having left his master, and said he would live no longer with him under his control; and that it would be extremely hard that he should be subjected to punishment only for using that liberty and exercising those rights which the law gave him. Lord *Mansfield* C. J. It has been adjudged that an infant may bind himself for his own benefit; and it is settled in the case in *Strange*, that a binding for four years gives a settlement. *Aston* J. *Supposing the indentures voidable, I cannot conceive that the apprentice's running away can avoid them.* Had he served regularly, and during such services declared his intention to depart, it might have been different. *Here he would make use of his offence in order to avoid the punishment that attends it, but it is too late to do it before a justice when charged with a crime; Willes* and *Ashhurst*, justices, being of the same opinion on this ground, the rule for the apprentice's discharge would have been discharged, but for an objection to the frame of the commitment, which is collatéral to the present question. Upon the authority of these cases, we are of opinion, that the indenture of apprenticeship in this case was *voidable* only, and not *void*; and that it was not avoided by any act other than the act of delinquency on the part of the apprentice, which was the subject of the punishment in question; and which, on the authority of the last mentioned case, as well as the reason of the thing, is not available for the purpose of avoiding an indenture of apprenticeship. On these grounds, therefore, we are of opinion, that the defendants, the justices, had by law the authority which they in fact exercised in this case, by a commitment under this conviction; and that they were therefore entitled to have been

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Voidable indentures cannot be avoided by apprentice deserting his master's service.

acquitted under the general issue pleaded by them. Rule absolute for entering a nonsuit.

The stat. 5 Eliz. c. 4. relates only to such persons, who bind themselves as apprentices, as are under age, and not to adults.

Smedley v. *Gooden*. *M.T.* 55*G*.3. 3 *M.*& *S*.189. An action of covenant upon articles of agreement made between the defendant and *J. Gooden*, his son, of the one part, and the plaintiff of the other, for the taking and keeping by the plaintiff of the said *J. Gooden* as his covenant servant in his trade of a hosier, for the term of five years, and the articles contained the usual covenants to be found in indentures of apprenticeship, and the plaintiff assigned for breach that *J. Gooden* absented himself from his service during the term. After oyer of the articles, the defendant pleaded *non est factum;* and also that the articles were made for the term of five years, contrary to the statute, whereby they were void. Demurrer to the last plea. Joinder.—In support of the demurrer, it was contended, that the articles were not void by the stat. 5 *Eliz. c*.4. by reason that they were for a less term than seven years, but voidable only, and the opinion of Lord *Hardwicke* in *Rex* v. *St. Nicholas, Ipswich, Burr. S. C.* 91. was cited, and that here the absenting himself from the service did not amount to an avoidance, (See *Gray v. Cookson, ante.*) The court interposed, by inquiring whether it appeared in any part of the record, that *J. Gooden* the son was an infant at the time when the articles were entered into; for if he was an adult, the statute, which relates only to persons under age, could not affect this contract; and this would be an answer to the plea *in limine*. Lord *Ellenborough* C. J. Can it be maintained that the stat. of *Eliz.* was intended to limit the powers of an adult to contract for his labour? The statute may perhaps be thought capable of a variety of bad interpretations, but it is to a considerable degree defunct, and I do not think it can be successfully argued, that one of its meanings was to restrain the binding, or, I should rather say, the contracting of adults for their own service. Here it does not appear but that the son was of age at the time of this agreement; and if he was, there is an end of the argument arising from the statute having disabled persons from binding themselves for a less period than seven years, because this person was not within the statute. Judgment for the plaintiff.

Every indenture, however, of an infant, (except of such apprentices as are bound under stat. 5 *Eliz. c*.4. § 25. or 26. *ante*, p. 117, 118.) is voidable at his election, on attaining his majority.

Infant bound when under age is entitled to be discharged at 21.

Thus, Ex parte *Mary Ann Davis*. *T.* 34 *G.*3. 5 *T. R.* 715. 1 *Bott.* 623. A *habeas corpus* was moved for to bring up this person, that she might be discharged from certain indentures of apprenticeship entered into between herself and *Edward Whitehouse*, esq. whereby she bound herself to him as an apprentice for seven years, being therein described as aged 14 years, but in fact being upwards of 17 at the time of binding, and being now upwards of 21; the indentures still subsisting. This application was grounded upon the principle that infants cannot be bound beyond 21, but that they may dissent after they arrive at that age. Ld. *Kenyon* C.J. It is clear that the apprentice must be discharged. Every indenture of an infant is voidable at his election; and in such cases the master must trust to the covenant of those who engage for the infant. But where the binding is under the autho-

Except where the binding is

rity of an act of parliament, that takes away the power of electing to vacate the indentures. I know of no act which prohibits the party in a case like the present to make such election upon her coming of age. This apprentice ought not to have been bound longer than till she was 21; and we ought now to discharge her. The other judges concurred.

under an act of parliament.

An apprentice had at the age of 18 bound himself till 25: after he was 21 years of age, he had, at the suit of his master, been committed upon a conviction before two magistrates, on 20 *Geo.*2. *c.*19. for absenting himself from his service. The case of *M. A. Davis* was cited in support of a motion for a *habeas corpus* to bring up the apprentice. Upon the return to the writ, the conviction was set out, and upon the face of it there appeared no objection to have been made by the apprentice, when before the magistrates, on the ground of his right of election to continue after he came of age. The court remanded him, the conviction appearing regular; and said that the court of K.B. had no authority to direct the discharge of the apprentice from his indentures, and *that in Rex* v. *Davis the report was mistaken in that respect*. *Lawrence* J. said he did not know of a *habeas corpus* to discharge an apprentice from indentures. How can this court undertake to discharge men from their covenants upon a *habeas corpus?* *Ex parte Gill*, 7 *East*, 376. 1 *Bott*, 718.

But the court of King's Bench cannot discharge the indentures.

It is suggested, that in *Davis's case*, she was in the care or custody of some person, and that the *habeas corpus* was to bring her up to be discharged. 3 *Smith's Rep.*372.

And as an infant may be bound by indenture, so the apprenticeship may be *de. ermined* by consent of all the parties concerned; which, in the case of parish poor children, includes the parish officers; in other cases, the father (or guardian), master and infant. (*a*) *Burr. S. C.* 562—766.

Determination of indentures.

Where a master receives money of an apprentice of full age to vacate his indentures, the relation is dissolved, though the indentures remain uncancelled. *Rex* v. *Justices of Devonshire*, *Cald.* 32.

But if a master license his apprentice to leave him, he cannot after recall that licence; and such licence may be pleaded to an action of covenant by the master. *Anon. per Holt* C. J. 6 *Mod.* 70.

By stat. 44 *G.*3. *c.*98. The former duties under the care of the commissioners for managing the duties upon stamped vellum, parchment, and paper, (*b*) were to cease and determine from 10th *Oct.* 1804, and new stamp duties were imposed by Sched. A. of that act: These were again repealed by stat. 48 *G.*3. *c.*149. and the new duties granted by that act were again repealed by stat. 55 *G.*3. *c.*184. by the Schedule of which act, Part I. the following stamp duties are payable upon indentures of apprenticeship:

Stamp duties.

55 G.3. c.184.

If the sum of money, or the value of any other matter
or thing which shall be paid, given, assigned, or
conveyed, or be secured to be paid, given, assigned

(*a*) See *Removal*, title Poor.

(*b*) *Viz.* those granted on indentures of apprenticeship by 5 & 6 *W. c.*21. § 3. 9 & 10 *W. c.*25. § 30. 12 *An. st.*2. *c.*9. § 21. 30 *G.*2. *c.*19. § 1. 16 *G.*3. *c.*34. § 5. 17 *G.*3. *c.*50. § 16. 23 *G.*3. *c.*58. § 1. 35 *G.*3. *c.*30. § 1. 37 *G.*3. *c.*90. § 1. *c.*111. § 1.

55 G.3. c.184.

	£.	s.	d.
or conveyed, to or for the use or benefit of the master or mistress, with or in respect of such apprentice, clerk or servant, or both the money and value of such other matter or thing shall not amount to 30*l*.	1	0	0
If the same shall amount to 30*l*. and not amount to 50*l*.	2	0	0
... 50*l*. ... 100*l*.	3	0	0
... 100*l*. ... 200*l*.	6	0	0
... 200*l*. ... 300*l*.	12	0	0
... 300*l*. ... 400*l*.	20	0	0
... 400*l*. ... 500*l*.	25	0	0
... 500*l*. ... 600*l*.	30	0	0
... 600*l*. ... 800*l*.	40	0	0
... 800*l*. ... 1000*l*.	50	0	0
... 1000*l*. or upwards,	60	0	0
And where there shall be no such consideration as aforesaid, moving to the master or mistress; if the indenture or other instrument shall not contain more than 1080 words,	1	0	0
And if the same shall contain more than that quantity,	1	15	0

Exemption for parish indentures.

The *Exemptions* are, " of indentures or other instruments placing out *poor* children apprentices, by or at the sole charge of any parish or township, or by or at the sole charge of any public *charity*, or pursuant to the 32 *G*.3. *c*.57. for the further regulation of parish apprentices.

Assignments of parish apprentices.

" And all assignments of such poor apprentices; provided there shall be no such valuable consideration as aforesaid given to the new master or mistress, other than what may have been or shall be given by any parish or township, or by any public charity."

8 Ann. c. 9. Premium not pecuniary.

By stat. 8 *Ann*. *c*. 9. § 45. And where any thing, not being money, shall directly or indirectly be given, assigned, conveyed, delivered, contracted for, or secured, to or for the use or benefit of any master with such apprentice, the duties shall be answered for the value thereof.

Exception in favour of parish apprentices.

§ 40. But this shall not extend to any apprentice, put out at the common or public charge of any parish or township, or out of any public charity. Vide 55 *G*.3. *c*.184. § 10.

Not only must there be a stamp, but the duty must actually be paid: as appears by *Cuerden* v. *Leyland*, where the master never paid the 6*d*. in the pound, according to 8 *Ann*. *c*.9. § 39.: and though the apprentice had served for three years, yet for want of the payment of the duty, the indenture was void. 1 *Bott*.545.

[*For what shall be deemed a consideration for the master's benefit, and, as such, must be inserted in the indentures, see* title Poor, *Settlement by Apprenticeship*. Vol. IV. Sect. ix. (7.)]

What is a public charity.

As to what shall be deemed a public charity, it is decided that money given by the parish officers (in the case of a voluntary binding) as the consideration for taking an apprentice, is not liable to the duty imposed by § 35. for it comes within the exception, as

Parish money.

being at the public charge of the parish. *Rex* v. *St. Petrox, Dartmouth*, 4 *T. R*.196. 1 *Bott*.554.

Voluntary contribution.

So, a voluntary yearly contribution of divers inhabitants of a parish, for the purpose of apprenticing poor children educated at

a public charity school in the parish, is a charity within the stat. 7 *J. c.*3., and therefore the indenture is exempted from the duty imposed by the above sect. of the stat. of Ann. *Rex* v. *St. Matthew, Bethnal Green, Burr. S. C.*574. 1 *Bott.*641.

So also, a bequest of money to put out such children apprentices as the testator's brother shall think fit, is a public charity, and within the exemption. *Rex* v. *Clifton upon Dunsmore, Burr. S. C.*697. 1 *Bott.*641.

Bequeathed apprentice money.

By stat. 8 *Ann. c.*9. § 35. The full sum of money received, or in anywise directly or indirectly given, paid, agreed, or contracted for, with or in relation to every apprentice, shall be inserted in the indenture in words at length; and the indenture shall bear date on the day of the signing, sealing, or other execution thereof; on pain that the master shall forfeit double the sum so given, &c. half to the king, and half with full costs to him that shall sue.

8 Ann. c.9.

Rex v. *Inhabitants of Keynsham*, 5 *East.*309. 1 *Bott.* 560. In this case, five guineas were agreed to be paid by the father to the master as a premium, and this sum was inserted in the indenture: the only sum paid was the sum of four guineas, which was paid at the time of dating and executing the indenture. The sessions considered this as void under 8 *Ann. c.*9. It was admitted on the argument, that the duty had been paid for the sum *contracted for*. *Per Curiam*, " By requiring the *full sum* to be inserted, it meant that *not less* than the sum upon which duty was really payable should be inserted; here in truth more than that sum has been inserted, and the duty paid upon it." Order of sessions quashed.

What shall be said to be the full sum.

Stokes, widow, v. *Twitchen*, C.P. T. 1818. 8 *Taunt.* 492. The plaintiff executed an indenture of apprenticeship (to which was appended the printed notice required by stat. 5 *G.3. c.*46. § 19. *post*, p. 137. for the insertion of the premium, &c.) and thereby bound her son apprentice to the defendant, and paid a premium. The indenture did not contain any statement respecting the premium, and was not stamped. The indenture being void for want of such statement, and not having been stamped within time, plaintiff brought *assumpsit* for the premium: Held, that plaintiff having executed the indenture without the insertion of the premium, notwithstanding the notice before her eyes to that effect, was not an innocent party, and could not recover the premium from the defendant, though paid without consideration, the indenture being void.

And by stat. 8 *Ann. c.* 9. § 43. No such indenture shall be given in evidence in any suit to be brought by any of the parties thereunto, unless such party on whose behalf the same shall be given in evidence do first make oath, that to the best of his knowledge the sum therein inserted was really and truly all that was directly or indirectly given, paid, &c. in respect of such apprentice, for the benefit of such master.

8 Ann. c.9. Oath that the true sum is inserted.

§ 36. The said indentures, within the bills, shall be brought to the head office to be stamped with a stamp for that purpose, and upon payment of the duties, the same shall be stamped within one month after date,

§ 37. And elsewhere shall be brought either to the head office within the bills, or to a collector of the stamp duties out of the

Stamping and indorsement

8 Ann. c.9.

said limits, in two months after date, and the duties thereupon shall be paid, and the indenture stamped, if it be at the said head office; otherwise, such collector shall indorse on the indenture a receipt for the duties in words at length, and subscribe his name thereto, and then deliver back the indenture to the bringer thereof.

Within what time.

§ 38. If it be within 50 miles of the limits of the bills of mortality, the indenture shall, within three months after date, and elsewhere within six months, be brought to the head office to be stamped.

Rex v. *Inhabitants of Chipping Norton*, *H.* 1822. 5 *B.* & *A.* 412., where by stat. 8 *Ann. c.*9. § 32. a premium stamp was imposed on indentures of apprenticeship, which by § 36, 37, 38. were required to be stamped within a prescribed time, and for want thereof were declared to be void; it was held that where an indenture, dated 30 *Oct.* 1794, was not so stamped, the pauper gained no settlement.

What shall avoid the indentures.

§ 39. And all such indentures wherein shall not be inserted the full sum received, or directly or indirectly given, &c., or whereupon the duties shall not be paid, or which shall not be stamped within the time limited, shall be void, and not available in any court or place, or to any purpose whatsoever; and the apprentice shall be incapable of being free of any city, town, corporation, or company, and of exercising the said trade.

Premium need not be inserted in a parish indenture.

Although this last mentioned section (39.) requires the full sum paid with an apprentice to be inserted in the indenture, yet that is only for the purpose of raising a duty thereon. When, therefore, the 40th clause exempts *parish* indentures from the payment of these duties, it entirely supersedes the necessity of inserting the sum paid in the indenture, and therefore the reason for the provision ceasing, the provision itself ceases to be necessary. *Rex* v. *Oadly*, *E.* 58 *G.*3. 1 *B.*&*A.* 477. Per *Bayley* J.

9 Ann. c.21. 18 G.2. c.22. Penalty on non-payment of duties.

And moreover, by stat. 9 *Ann. c.*21. § 66. If the master shall neglect to pay the duties within the time limited, he shall forfeit 50*l.* half to the king, and half, with full costs, to him who shall sue.

By stat. 18 *G.*2. *c.*22. § 23, 24. If he shall neglect to pay the same as aforesaid, he shall, besides all other penalties, forfeit double duty.

20 G.2. c.45.

By stat. 20 *G.*2. *c.*45. § 5. If any master, having forfeited the double duty, shall pay the same, and tender the indenture to be stamped within two years after the determination of the apprenticeship, and before suit hath been commenced for the penalties, the indenture shall be valid, and the penalties discharged.

Recovery by the apprentice of a penalty from the master.

§ 6. 7. And if after the master shall have forfeited the double duty, the apprentice shall, in the presence of or by writing under his hand, signed in the presence of one witness, require his master to pay the same; and if the master shall not do it in three months, and such apprentice shall at any time within two years after the determination of his apprenticeship, pay the double duty, he may in three months after such payment demand of his master double the sum contracted for in the indenture, and if not paid in three months after, may recover the same by action at law, with full costs. And the apprentice immediately after payment of the said double duties, (if his apprenticeship shall not be then expired,)

and signifying by writing under his hand that he desires to be discharged from his apprenticeship, shall be discharged accordingly, and shall have the same benefit of the time he hath served as he would have had in case he had been assigned, or turned over, to a new master.

20 G. 2. c. 45.

§ 8. And where any prosecution shall be commenced against the master for the penalties, if the apprentice shall pay the double duty at any time in two years after the end of his apprenticeship, he may thereupon exercise his trade, and the indenture shall be valid, and may be given in evidence.

Stamping indentures after execution.

[Indentures of apprenticeship executed since the passing of stat. 44 *G.* 3. *c.* 98., can be stamped on paying a penalty of *5l.* and the amount of the duty. See stat. 6 & 7 *W.* 3. *c.* 12. § 7. But indentures executed before the passing of stat. 44 *G.* 3. *c.* 98. which before that act would require to be enrolled, cannot now be made valid on payment of any penalty, the time for enrolling such indentures on payment of double duties having expired. See stats. 18 *G.* 2. *c.* 22. § 24. 20 *G.* 2. *c.* 45. § 4. 42 *G.* 3. *c.* 23. § 7. and *Rex* v. *Chipping Norton*, 5 *B.* & *A.* 412. *ante*, p. 136.]

5 G. 3. c. 46.

By stat. 5 *G.* 3. *c.* 46. § 18. 41. every chamberlain and other proper officer of every city and corporate town and company, where any apprentice obtains his freedom by servitude, shall enter in a book to be kept for that purpose, the names of all such apprentices as shall be put out within the jurisdiction of such city or town corporate, and also the names and places of abode of the masters or mistresses, and of the sums of money [but it is not said, *or other things equivalent*] given or contracted for, and the profession, trade, or employment, which they are to learn; and the dates of the indentures; on pain of 20*l.*, half to the king, and half to him that shall sue in any court of record with full costs.

Memorandum to be printed under all printed indentures.

§ 19. And all printed indentures shall have the following memorandum printed under the same; *viz.* "The indenture, covenant, article or contract, must bear date the day it is executed; and what money or other thing is given or contracted for with the clerk or apprentice, must be inserted in words at length (*a*); and the duty paid to the stamp office, if in *London*, or within the weekly bills of mortality, within one month after the execution, and if in the country, and out of the said bills of mortality, within two months, to a distributor of the stamps or his substitute; otherwise the indenture will be void, the master or mistress forfeit 50*l.* and another penalty, and the apprentice be disabled to follow his trade, or to be made free." And if any printer, stationer, or other person, shall sell or cause to be sold any such indenture, without such memorandum being printed under the same, he shall forfeit 10*l.* in like manner.

IV. Binding and Assignment of Parish Apprentices.

43 Eliz. c. 2. Power to bind.

By stat. 43 *Eliz.* *c.* 2. § 5. The churchwardens and overseers, or the greater part of them, by the assent of two justices B. (1 *Q.*), (*a*)

(*a*) See *Stokes* v. *Twitchen*, *ante*, p. 135. (*b*) See *post*, tit. Justices.

may bind any such children, whose parents they shall judge not able to maintain them, to be apprentices where they shall see convenient, till such man child shall come to the age of 21 (18 *Geo.*3. *c.* 47.), and such woman child to the age of 21 or marriage; the same to be as effectual to all purposes as if such child were of full age, and by indenture of covenant bound him or himself.

56 G 3. c.139.

By stat. 56 *Geo.*3. *c.*139. intituled "*An act to regulate the binding of parish apprentices,*" after reciting § 1. "that, whereas many grievances have arisen from the binding of poor children as apprentices by parish officers to improper persons, and to persons residing at a distance from the parishes to which such poor children belong, whereby the said parish officers and the parents of such children are deprived of the opportunity of knowing the manner in which such children are treated, and the parents and children have in many instances become estranged from each other; and also from the permission given to apprentices, by the persons to whom such apprentices have been bound, to serve others without a formal assignment, whereby the discretion to be exercised by magistrates in placing out apprentices to suitable persons is frequently rendered of no avail; for remedy whereof, it is enacted, that from and after the 1st day of *October*, 1816, before any child shall be bound apprentice by the overseers of the poor of any parish, township, or place, such child shall be carried before two justices of the peace of the county, riding, division, or place wherein such parish, township, or place shall be situate, who shall enquire into the propriety of binding such child apprentice to the person or persons to whom it shall be proposed by such overseers to bind such child; and such justices shall particularly enquire and consider whether such person or persons reside, or have his, her, or their place or places of business within a reasonable distance from the place to which such child shall belong, having regard to the means of communication between such places, or whether any circumstances shall make it fit, in the judgment of such justices, that such child should be placed apprentice at a greater distance; and if the father or mother of such child shall be living, and shall reside in or near the place to which such child shall belong, such justices shall (if they see fit) examine such father or mother, or either of them, and shall particularly enquire as to the distance of the residence or place of business of the person or persons to whom it shall be proposed to place such child, and the means of communication therewith; and such justices shall also enquire into the circumstances and character of such person or persons; and if such justices shall, upon such examination and enquiry, think it proper that such child should be bound apprentice to such person or persons, such justices shall make an order (A), declaring that such person or persons is or are fit person or persons to whom such child may be properly bound as apprentice, and shall thereupon order that the overseer or overseers of the place, to which such child shall belong shall be at liberty to bind such child apprentice accordingly; which order shall be delivered to such overseer or overseers as the warrant for binding such child apprentice as aforesaid; and such order shall be referred to by the date thereof, and the names of the said justices, in the indenture of

How parish apprentices shall be bound.

Child to be first carried before two justices of peace;

who are to enquire whether the person to whom it is intended to bind the apprentice resides within a reasonable distance; and into other circumstances.

Justices may examine parents as to distance, &c.

Character and circumstances of master.

Justices to make an order that the overseers may bind, &c.

A.

Order to be referred to in the indenture and

apprenticeship of such child (B); (*a*) and after such order shall have been made, such justices shall sign their allowance of such indenture of apprenticeship, before the same shall be executed by any of the other parties thereto: provided always, that no such child shall be bound apprentice to any person or persons residing or having any establishment in trade, at which it is intended that such child shall be employed, out of the same county, at a greater distance than forty miles from the parish or place to which such child shall belong, unless such child shall belong to some parish or place which shall be more than forty miles from the city of *London*, in which case it shall be lawful for the justices who shall authorise the apprenticing of such child to make a special order (C) for that purpose, in which order such justices shall distinctly specify the grounds on which they shall think fit to allow of the apprenticing of such child to a person or persons residing, or having an establishment in trade, at a greater distance than forty miles from the parish or place to which such child shall belong."

56 G.3. c.139.

signed by justices before execution of indenture.

No child to be bound beyond 40 miles out of the county,

unless child's parish be more than 40 miles from London.

C.

Special grounds for allowing to be stated by the justices.

§ 2. "In all cases where the residence or establishment of business of the person or persons to whom any child shall be bound, shall be within a different county or jurisdiction of the peace from that within which the place by the officers whereof such child shall be bound shall be situated, and in all other cases where the justices of the peace for the district or place within which the place by the officers whereof such child shall be bound shall be situated, and who shall sign the allowance of the indenture (D) by which such child shall be bound, shall not have jurisdiction, every indenture by which such child shall be bound at any time after the said 1st day of *October* shall be allowed as well by two justices of the peace for the county or district within which the place by the officers of which such child shall be bound shall be situated, as by two justices of the peace for the county or district within which the place shall be situated wherein such child shall be intended to serve: provided always, that no indenture shall be allowed by any justice of the peace for the county into which such child shall be bound, who shall be engaged in the same business, employment, or manufacture in which the person to whom such child shall be bound is engaged; and notice shall be given to the overseers of the poor of the parish or place in which such child shall be intended to serve an apprenticeship, before any justice of the peace for the county or district within which such parish or place shall be, shall allow such indenture; and such notice shall be proved before such justice shall sign such indenture, unless one of such overseers shall attend such justice, and admit such notice."

Indenture to be allowed by two justices of the county or jurisdiction into which apprentice is to be bound, as well as by two justices of the county or jurisdiction from which he is bound.

D.

§ 3. Provided, "that the allowance of two justices of the peace for the county, within which the place in which such child shall be intended to serve an apprenticeship shall be situated, shall be valid and effectual, although such place may be situated in a town

The allowance by county magistrates to be valid in towns

(*a*) *Rex* v. *Inhabs. of Bawbergh*, *T.* 1823. 2 *B. & Cr.* 222. The stat. 56 *G.* 3. c.139. § 1. requiring that the order of justices for the binding out of parish apprentices shall be referred to in the indenture by the date thereof, is compulsory; and, therefore, an indenture in which the date of the order is omitted, is void, and no settlement is gained by serving under it.

56 G.3. c.139.

or liberty within which any other justices of the peace may in other respects have an exclusive jurisdiction."

and places having exclusive jurisdiction.

Distance to which apprentices may be bound not to be limited to cities which are counties of themselves.

§ 4. " And whereas there are several cities and boroughs which are counties of themselves, and several districts situated without the limits of the county to which such districts respectively belong; be it enacted, that the distance to which parish apprentices may be bound shall not be construed to be limited to such cities and boroughs being counties, but shall extend to the county in which any such city and borough, and any such district, though belonging to another county, shall be locally situated."

No settlement shall be gained unless directions complied with.

§ 5. " No settlement shall be gained by any child who shall be bound by the officers of any parish, township, or place, by reason of such apprenticeship, unless such order shall be made and such allowances of such indenture of apprenticeship shall be signed, as herein-before directed."(a)

Penalty on overseers binding apprentices contrary hereto.

§ 6. " In case any overseer or overseers shall bind an apprentice to any person or persons without having obtained such order and such allowances as herein-before required, and in case any person or persons shall receive any such apprentice as so bound, without such order and allowances having been first obtained, the said overseer or overseers, and the said person or persons, shall each respectively forfeit the sum of 10*l.* for each apprentice so bound, to be recovered as the penalties hereinafter given are directed to be recovered."

Age. Children not to be bound until 9 years old.

§ 7. " After the said 1st day of *October* it shall not be lawful for any parish officers to bind out any child as parish apprentice until such child shall have attained the age of nine years."

In cases of master's removal, &c. how apprentices disposed of.

Master on removing out of the county or 40 miles from the parish where apprentice was bound, to give 14 days' notice to the parish where apprentice resides, or by which he is certificated.

Apprentice to appear before two justices of county, who shall enquire &c. and make order for apprentice's continuance or otherwise.

E.

§ 8. " If any person or persons to whom any child shall be bound apprentice by the overseers of the poor of any parish or place, shall after the said 1st day of *October* remove his, her, or their residence or establishment of business out of the same county, or forty miles from the parish or place wherein the same was when such child was bound apprentice, such person or persons shall, at least fourteen days previous to such removal, give a written notice thereof to the churchwardens or overseers of the poor of the place where such apprentice shall then reside, unless such person or persons shall reside in such place under certificate; and in that case such persons shall give the like notice to the churchwardens or overseers of the poor of the place where such apprentice shall then be legally settled; and which churchwardens and overseers, and also the master or masters, mistress or mistresses of such apprentice, shall cause such apprentice to appear before two of H. M.'s justices of the peace for the county or district within which such apprentice shall be then serving, who shall enquire whether it may be fit and proper that such apprentice should continue in the service of such person or persons, or be discharged therefrom, or bound or assigned over to any other person or persons, and shall thereupon make order (E), either for the continuance of such apprentice with such person or persons, or for the discharge of such apprentice, or for the binding or assigning of such apprentice to any other person, as to them

(a) See *R.* v. *Bawbergh*, *ante*, p. 139. (note).

in their discretion shall seem meet; and, if they shall see fit, shall also require the person or persons so giving notice of removal to pay the amount of the premium received with such apprentice, or such portion of it as to them shall seem meet, for the expence of assigning or binding such apprentice to any other person to be approved by the said justices; and the person or persons to whom such apprentice shall be so bound or assigned, shall be subject to the same rules and regulations as the person or persons to whom such apprentice shall be originally bound; and in case any such master or masters, mistress or mistresses, shall remove as aforesaid, and shall take any such apprentice to any other place, without such order as aforesaid, or shall wilfully abandon and leave any such apprentice without giving such notice as aforesaid, every person so offending shall forfeit the sum of 10*l.* for every such apprentice, to the churchwardens and overseers of the poor of the parish, township, or place wherein, at the time of such removal or taking, the apprentice shall have been legally settled, for the use of the poor of the same parish, township, or place; provided an information shall be exhibited for such offence within three calendar months next after the commission of the same."

56 G.3. c.139.

§ 11. "And whereas the salutary provisions enacted by an act passed in the 43d year of the reign of H. M. queen *Elizabeth*, intituled an act for the relief of the poor, are frequently evaded in the binding out of poor children, and the premium of apprenticeship, or a part thereof, is clandestinely provided by parish officers, who are thus enabled to bind out such poor children without the sanction of justices of peace; be it further enacted, that after the said 1st day of *October* no indenture of apprenticeship, by reason of which any expense whatever shall at any time be incurred by the public parochial funds, shall be valid and effectual, unless approved of by two justices of the peace, under their hands and seals, according to the provisions of the said act and of this act." (B.)

Indentures not valid unless approved by two justices.

B.

§ 12. "All penalties and forfeitures hereby imposed for any offence against this act shall and may be recovered by information before any two justices of the peace of the county or district where such offence shall be committed."

Penalties may be recovered by information, &c.

§ 13. "It shall and may be lawful to and for the justices before whom any such penalty shall be recovered, to direct such penalty, after deducting the necessary costs and charges attending any information, and the proceedings thereon, to be paid, applied, and distributed, either to the person or persons giving information of the offence for which such penalty shall be incurred, or to the overseer of the poor of the parish or township in which such offence shall have been committed, or by the officers whereof such apprentice shall have been bound, for the use of the poor of such parish or township, or in the binding of the apprentice respecting whom such offence shall be committed, to any other person, or to be distributed and applied for any one or more of such purposes, as to such justices shall seem meet."

Justices empowered to dispose of penalties.

§ 14. "In case of non-payment of any penalty hereby imposed, the same shall be levied by distress and sale of the offender's goods and chattels, by warrant under the hands and

Recovery of penalties.

56 G.3. c.139.

seals of the justices before whom such offender shall have been convicted, or of any other two justices of the peace of the same county or district; and for want of such distress, such offender shall be committed to the common gaol or house of correction for any period not less than one, nor more than six months, to be appointed by the justices before whom such offender shall be convicted."

Form of conviction. F.

§ 15. "The conviction of all offences against this act, shall be in the form (F.)"

Persons not paying penalty may be imprisoned.

§ 16. "In case any person convicted for any offence against this act shall not pay the penalty imposed by such conviction within one calendar month next after such conviction shall take place, it shall be lawful to and for the justices making such conviction, or for any two other justices of the county or district, to issue their warrant for the apprehending and imprisoning of such offender, notwithstanding such offender may have goods or chattels whereby such penalty might have been levied.

Power of appeal.

§ 17. "Any person or persons who shall be dissatisfied with any act done by any justice or justices of the peace in the execution of this act, may appeal against the same to any court or general or quarter sessions to be holden for the county within which such act shall have been done, within three calendar months after the fact so complained of, upon giving notice in writing to such justice or justices, and also to the person or persons who shall be interested in such appeal, within twenty-one days next after the act so appealed against shall have taken place; and in case such appeal shall be against any conviction, entering into a recognizance, with two sufficient sureties, before any justice of the peace of the county or district within which such conviction shall have taken place, to appear at such general or quarter sessions to abide the judgment of the court upon such appeal, and to pay the costs which may be awarded thereon; and that it shall and may be lawful to and for the justices at such sessions to hear and determine the matter of such appeal, and to award costs therein, as they in their discretion shall think fit; and all such appeals shall be to the sessions of the county within which the act appealed against shall have taken place, and not to any district or liberty within the same."

Church-wardens.

§ 18. "The provisions and penalties herein contained respecting overseers of the poor shall be deemed to extend to all churchwardens having the power and authority of overseers of the poor; and all the provisions herein mentioned and contained respecting any parish or place shall extend to any incorporated or other district for the maintenance of the poor; and the officers of any such district, having power to bind apprentices, shall be subject to all the rules, regulations, and penalties herein mentioned and contained respecting overseers of the poor."

An indenture binding out a poor apprentice executed by W. S. church-warden, and J. G. overseer held sufficient.

A parish indenture ran thus: "This indenture, made the 2d day of *April* 1800, in the 40 *G.*3., &c. witnesseth that *W. Sketchley*, *churchwarden* of the hamlet of *Attertan*, in the parish of *Wetherley*, in the county of *Leicester*, and *J. Geary*, *overseer* of the poor of the said hamlet, by and with the consent of H. M's. justices, &c. by these presents do put and place *James Adie*, aged fourteen years, a poor child of the said parish, apprentice to *J.*

Bazley, of the parish of *Hinckley*, in the county of *Leicester*, frame-work knitter, with him to dwell and serve, &c. until the said apprentice shall accomplish his full age of twenty-one years, according to the statute, &c.;" and so it proceeded in the common form; concluding with covenants by *Bazley* to the said churchwardens and overseers, and every of them, &c. and their successors, " to instruct the apprentice in his trade, and so to provide for the said apprentice that he be not a charge to the said hamlet, &c. In witness, &c. (Signed) *W. Sketchley*, *J. Geary*, and *J. Bazley*;" and the consent of the two justices to the indenture was in the usual form. The question was, whether this indenture of apprenticeship were a valid instrument or not, being made and executed by *one* churchwarden, and *one* overseer only? After argument, Lord *Ellenborough* C. J. said, No evidence having been given to impeach the validity of this indenture by shewing that it was executed by less than a majority of the proper officers charged with that duty, the validity of it must be tried by itself: and if any intendment can by law be made to support it, we must make that intendment. Now if there were two existing overseers at the time, and only one churchwarden, the two who executed the indenture, being a majority, would be sufficient to bind the apprentice. Then can there be by law only one churchwarden? That may be regulated by custom, and by custom there may be only one in this place: therefore the party who impeached the indenture should have given evidence to rebut the intendment which may be made in support of it while unimpeached by evidence.—*Le Blanc* J. The indenture was produced on one side, and there was no evidence to impeach it on the other. The question then is, Whether by any intendment of law such an indenture can be good? And it may be good by intendment in the way put by my lord. Then, not being impeached by evidence, it stands good.—The other judges concurred. *Rex* v. *Inh. of Hinckley*, *E.* 50 *G.*3. 12 *East.* 361.

R. v. Inh. of Hinckley.

By custom there may be *one* churchwarden.

Rex v. *Earl Shilton*, *H.* 58 *G.*3. 1 *B. & A.* 275. So also an indenture binding a poor apprentice, which was executed by *one* churchwarden, (when by custom there was but *one*,) and one overseer, was held to be vliad in the following recent case: By indenture, dated the 10th day of *June* 1799, *John Pratt*, churchwarden, and *Daniel Morton*, overseer of the poor of the parish of *Croft*, in the county of *Leicester*, with the consent of two magistrates, bound the pauper *John Armston*, being then about ten years of age, apprentice to *Enoch Gilliver* of *Earl Shilton*, in the county of *Leicester*, to serve him until the pauper attained his age of twenty-one years. The pauper served *Gilliver* under this binding for two years, and resided in *Earl Shilton*. The appellants objected to the indenture, that it was signed by *one churchwarden* and *one overseer* only; and they then proved the registry of appointments of churchwardens for the parish of *Croft*, that in the year when the above indenture was executed, only *one* churchwarden was appointed for that parish, and it was admitted that he was the only churchwarden of the parish, the year throughout. It was further proved, that for forty years preceding, the practice had invariably been, in the above parish, to appoint only one churchwarden. The question was, whether such indenture

Parish indenture signed by *one* churchwarden and *one* overseer held valid.

of apprenticeship made and executed during the time when the parish had but one churchwarden, is a valid instrument or not? After argument, Lord *Ellenborough* C. J. said, Generally speaking there are two churchwardens; but I think that the legislature used the word churchwardens here in the plural number, not as requiring that there should be two, but as speaking of the whole body of officers of that description, of whatever number that body be constituted. By custom there may be only one churchwarden in a parish, and if so, it is absolutely necessary that all the powers of the 43 *Eliz.* should be vested in him, or otherwise the act would be nullified in all those parishes in which such a custom prevailed. The act does not expressly require two churchwardens, and the inconvenience that would necessarily result from adopting that construction of the statute is sufficient to induce me to reject it altogether.—*Bayley* J. The word churchwardens in the plural number is here used because the legislature were aware that they were generally two. It is as if they had said, "all churchwardens, whether one or more."—*Abbott* J. and *Holroyd* J. concurred.

43 El. c. 2. § 5.

By custom there may be only one churchwarden.

Rex v. *All Saints, Derby*, *M.*51. *G.*3. 15 *East*, 143. But where a parish indenture was executed by two persons, styling themselves churchwardens and overseers, one of whom was also *sole* churchwarden, the binding was held insufficient; for the stat. 43 *Eliz. c.*2. requires that there shall be two overseers distinct from the churchwardens. But to remedy the serious inconveniences which might arise from this decision, by stat. 51 *G.*3. *c.*80., reciting, that whereas by 43 *Eliz. c.*2. "It is enacted, that the churchwardens of every parish, and four, three, or two substantial householders there, as shall be thought meet, having respect to the proportion and greatness of the same parish and parishes, to be nominated yearly in *Easter* week, or within one month after *Easter*, in the manner therein directed, shall be overseers of the poor of the same parish; and that it shall be lawful for the said churchwardens and overseers, or the greater part of them, by the assent of two justices of the peace, to bind the children of such parents as shall not by the said churchwardens and overseers, or the greater part of them, be thought able to maintain their children, to be apprentices: *and whereas* in divers small parishes, two persons only have been annually appointed to act in the capacity of churchwardens as well as overseers of the poor: *and whereas* divers indentures for the binding of parish apprentices have been executed and signed by such two persons, purporting to be the churchwardens and overseers of such parishes; but, by reason that the said indentures have not been signed by distinct persons as churchwardens and other distinct persons as overseers, such indentures have been or may be deemed to be void:" *it is enacted*, "That all indentures for the binding of parish apprentices, which have been heretofore executed and signed by two persons only, acting or purporting to act in the capacity of churchwardens as well as of overseers of the poor, and also all such indentures as shall hereafter be so signed, shall be considered as good, valid, and effectual, as if the same had been executed and signed by distinct persons as churchwardens, and distinct persons as overseers of the poor, according to the said recited act."

51 G. 3. c. 80. intituled "An act to render valid certain indentures for the binding of parish apprentices," and dated 15 June, 1811.

Indentures and certificates which have heretofore been signed by two persons only acting as churchwardens and overseers to be valid.

51 G.3. c.80.

Act not to affect any prior decision, &c.

And by § 2. "Nothing in this act contained shall extend to do away or alter any decision which may have taken place in any court of law, respecting the binding of any parish apprentice, or the settlement of any poor person, before the passing of this act."

It has recently been determined, that the stat. 51 *G.*3. *c.*80. extends to parishes where there are three officers only, one of whom acts as churchwarden as well as overseer; and, therefore, an indenture signed by two parish officers, one of whom acted in a double capacity, was held to be valid. The case was as follows: Removal from *St. Margaret's, Leicester,* to *Foxton,* in *Leicestershire.* The sessions on appeal quashed the order, subject to the opinion of the K. B. on the following case: — *W. B.*, the husband of the pauper, had a derivative settlement in the parish of *F.* and was bound apprentice by a parish indenture, dated 30th *April,* 1791, to *R. W.* of *G. W.* The indenture witnessed, that *T. C.* and *T. I.*, churchwardens of the parish of *F.*, *and the said T. C.* and *T. C.*, overseers of the poor of the said parish, do put and place *W. B.*, apprentice, &c. It was duly allowed by two magistrates, but executed by *T. C.* and *T. C.* only. The pauper's husband served a sufficient time under it to gain a settlement in *G. W.*, if the indenture were valid. It was admitted, that *T. C.* and *T. I.* were the two churchwardens of *Foxton* at the time when the same *T. C.* and *T. C.* were appointed overseers of the poor, and that these persons were the officers of the parish in the year comprehending the 30th *April* 1791, the day on which the indenture was executed. The question was, whether the indenture was valid or not? After argument, *Abbott* C. J. said, This act of parliament was a remedial act, and ought therefore to receive a liberal construction; and I do not think, that in holding that this case is within it, we put any forced construction upon its provisions. This case is clearly within the mischief of the act, and I think within the fair meaning of the words by which it is remedied. I am therefore of opinion, that the 51 *G.*3. *c.*80. extends not only to cases where *both* the parish officers *act in a double capacity,* but to those also where only *one* of them is in that situation. The decision of the sessions was therefore right.—*Bayley* J. This act was passed almost immediately after the determination of this court in *Rex* v. *All Saints, Derby,* 13 *East,* 143. And there one only of the officers acted in a double capacity. It was to remedy the inconvenience resulting from that decision that the act was passed: I think it is not a forced construction of it, (when it is admitted that its provisions include the case of a double defect,) to hold that they also extend to the case of a defect in one parish officer only.—Order of sessions confirmed. *Rex* v. *Inhabs. of St. Margaret's Leicester.* 2 *B.* and *A.* 200.

Case.

54 G.3. c.107.

Certain indentures for the binding of parish apprentices made valid.

And by stat. 54 *G.*3. *c.*107., after reciting stat. 43 *Eliz.* c.2. § 5. respecting the binding of parish apprentices, and stat. 8&9 *W.*3. *c.*30. § 1. respecting certificates of settlement.(*a*) And that "whereas divers parishes contain within themselves several townships, hamlets, or chapelries, each of which separately maintains its own

(*a*) Dated July 23. 1814. As to certificates of settlement, see Vol. IV. § XIV. 1.

54 G.3. c. 107.

poor: And whereas in such parishes the churchwardens are for the most part sworn into their offices as churchwardens of the whole parish, although in truth and in fact, they act as churchwardens of the separate townships, hamlets, or chapelries therein contained: And whereas divers indentures for the binding of parish apprentices, have heretofore been signed and executed by a person or persons styling himself or themselves, and stated in such indentures to be churchwarden or churchwardens, chapelwarden or chapelwardens, of the township, hamlet, or chapelry, binding such poor apprentices: And whereas such person or persons have not been sworn into the office of churchwarden or chapelwardens of such township, hamlet, or chapelry, but of churchwarden of the parish wherein such township, hamlet, or chapelry, is contained;" it is enacted, "That all indentures for the binding of poor apprentices, which have been heretofore signed and executed, or which shall hereafter be signed and executed by a person or persons, who at the time of his or their signing and executing such indenture, acted as churchwarden or churchwardens, chapelwarden or chapelwardens, of the township, hamlet, or chapelry, binding such poor apprentice, shall be deemed and taken to be as good, valid, and effectual, as if the same had been signed and executed by a person or persons actually sworn into the office of churchwarden or chapelwarden of such township, hamlet, or chapelry: Provided always, that such person or persons shall have been duly sworn into the office of churchwarden of the parish wherein the township, hamlet, or chapelry, binding such poor apprentice, be contained, or into the office of churchwarden or chapelwarden of such township, hamlet, or chapelry."

Indentures made valid although the churchwardens, &c. were not sworn in.

§ 2. Enacts, "That all indentures for the binding of poor apprentices, which shall have been heretofore signed and executed, or which may hereafter be signed and executed by the overseers of the poor of any township, hamlet, chapelry, or place, and the churchwarden or churchwardens, chapelwarden or chapelwardens, acting for or appointed in respect of such township, hamlet, chapelry, or place, or the major part of them, shall be deemed and taken to be as good, valid, and effectual, as if the said indentures had been signed and executed by such overseers and the churchwardens of the parish wherein such township, hamlet, chapelry, or place is situate, or the major part of them."

Such indentures to be valid if executed by the overseers of the poor of any township, &c.

§ 3. Provides. "That nothing herein contained shall be construed to alter, impeach, or affect the settlement of any person, for whose removal any order of justices shall have been duly made before the passing of this act."

Not to affect settlements.

1&2 G.4. c.32.

And stat.1 & 2 *G.4. c.32.* After reciting that "Whereas in divers parishes, townships, hamlets, chapelries, and places in *England*, for a long period of time, only one churchwarden or chapelwarden has been annually appointed, where two or more churchwardens or chapelwardens had been formerly appointed for each of such parishes, townships, hamlets, chapelries, or places: And whereas divers indentures for the binding of parish apprentices, which may have been executed and signed by such single churchwarden or chapelwarden, acting in and for a parish, township, hamlet, or place, for which formerly two or more churchwardens or

chapelwardens had been appointed, may on that account, if contested in a court of law, be deemed to be null and void: And whereas much litigation has recently arisen between parishes, owing to the discovery of such defect as above mentioned in the appointment of churchwardens and chapelwardens; and it would tend to prevent future litigation, if such indentures as beforementioned were in certain cases declared to be valid and effectual:" Enacts that from and after the passing of this act, [*viz.* 28th May, 1821,] all indentures for the binding of parish apprentices, which have been, previous to the passing of this act, executed or signed by one churchwarden or chapel-warden, acting or purporting to act in the capacity of churchwarden or churchwardens, chapelwarden or chapelwardens, for any parish, township, hamlet, chapelry, or place in *England*, for which two churchwardens or chapelwardens had formerly been appointed, shall be deemed and taken to be as good and effectual to all intents and purposes as if the same indentures had been executed by one or more churchwarden or chapelwarden, churchwardens or chapelwardens, legally appointed; any law, statute, usage, or custom to the contrary notwithstanding. As to certificates of settlement, see Vol. IV. tit. Poor, § XIV. 1.

1&2 G.4. c.32.

Certain indentures executed before 28 May, 1821, declared valid.

By § 2. it is provided, enacted and declared, that nothing in this act contained shall be construed to affect or set aside any decision or judgment made or given in any court of judicature respecting any such indentures, or to alter, impeach, or affect the settlement of any person for whose removal any order of justices shall have been duly made, previous to the passing of this act, or to legalize or make valid any indentures to be signed or executed as herein before mentioned, after the passing of this act.

Not to affect decisions already made.

'*By the assent of two justices.*'] This act of the justices being in its nature an act of judgment, it is indispensably necessary that they should be and confer together when their assent is given; for where an indenture was separately signed by two justices, and they neither assented nor signed at the same time, or in the presence of each other, it was held void, and that no settlement could be gained by service under it.—In the case referred to, Lord *Kenyon* C.J. said, This appears to be one of the most serious subjects that fall within the decisions of the justices. For they are empowered by this act to take children out of the arms of their parents, and to bind them out as apprentices till they are twenty-one years of age. The law has made them the guardians for those children, who have no others to take care of them. And who ought to judge of the fitness of the persons to whom the poor children are thus to be apprenticed? not the overseers; they are frequently obscure people, and perhaps in managing the business of the parish are not always attentive to the feelings of parents. But the legislature intended that the magistrates should have a check and control over the parish officers in this instance; and, in my mind, they are called upon to examine with the most minute and anxious attention the situations of the masters to whom the apprentices are to be bound, and to exercise their judgment solemnly and soberly before they allow or disallow the act of the parish officers; for which purpose it is necessary that they should confer together.—*Per Ashhurst* J.

43 Eliz. c.2. The assent of justices being a judicial act, must be given in the presence of each other.

Observations of Lord Kenyon, &c. upon this subject.

The act of the justices in this case is in its nature an act of judgment. They are the guardians of the morals of the people, and ought to take care that the apprentices are not placed with masters who may corrupt their morals. The justices, therefore, should enquire particularly whether or not they ought to allow the binding by the parish officers; and they would be guilty of a breach of duty, if they implicitly gave their assent without examining into the circumstances of the case.—*Per Buller* J. The act of assenting to the binding of parish apprentices is purely *judicial;* for on appeal, the justices at the sessions are not only to consider the propriety of binding out the apprentice, but also whether the master be bound to take him.—*Per Grose* J. This act is peculiarly of a judicial nature, for the magistrates are appointed the guardians of those who have no other guardians. They should therefore exercise their judgment in this case with great deliberation. *Rex* v. *Hamstall Ridware,* 3 *T.R.*381. 1 *Bott.* 620.

But it has been held to be sufficient, although one magistrate sign the indenture when alone, if he is afterwards present when the other executed it, and they both agreed to the propriety of the measure. (*a*) *Rex* v. *Winwick,* 8 *T.R.*454. 1 *Bott.*625.

A master having executed the counterpart of the indenture is estopped from proving any prior informality in such indentures.

But where a master had executed the counterpart of an indenture, and afterwards appealed, the court of K. B. held, that the sessions had done right in rejecting parol evidence, which was offered to shew, that at the time when the counterpart was executed by him, the indenture and counterpart were signed by one justice only, though the indenture when produced, appeared to have been signed and allowed by two justices; the appellant by having executed the counterpart was estopped, and could not be permitted to contradict his own deed. *Willes* J. inclined to think, it was sufficient if the justices gave their assent at any time before the appeal. *Rex* v. *Saltren, Cald.*444. 1 *Bott.*613.

Such children, whose, &c.] It is discretionary in the parish officers to select those children, whom they shall think their parents are not able to maintain. *Rex* v. *Crosse, Comb.*289. 1 *Bott.*604.

43 Eliz. c.2. applies only to a compulsory binding.

This stat. (43 *El. c.*2. § 5.) applies, in respect to the assent of two justices, only to poor children put out in a compulsory way; for where the binding is by consent, the statute does not extend to it, and therefore the allowance of the justices is not necessary in such case: and an infant may bind himself and make an indenture for his benefit. *Rex* v. *St. Mary's, Reading. Cas. of Sett. and Rem.*77. 1 *Bott.*605.

An infant may bind himself apprentice by indenture, be-

Rex v. *Arundel, T.* 56 *G.*3. 5 *M.* & *S.*257. Removal from *Arundel* to *Ferring* and quashed by the sessions *for Sussex,* subject to the opinion of the court of K. B. upon the following *case.* The pauper, *George Slater,* was bound apprentice to one *Barber,*

(*a*) *Per Lord Kenyon C. J. S.C.* The principle on which this case is determined, was recognized some years ago in a case of murder. A magistrate, who kept by him a number of blank warrants ready signed, on being applied to, filled up one of these, and signed and delivered it to the officer, who, on endeavouring to arrest the party, was killed; the judges were of opinion, that this was murder in the person killing the officer, and he was accordingly executed.

by indenture, in the usual form, (*a*) having a thirty shilling stamp, and regularly executed by *Barber* and the pauper, but not signed by any of the parish officers of *Arundel*, or assented to by any of the justices; and the question was, whether the signature of the parish officers, and the assent of the justices, were necessary to the validity of this indenture, under the following circumstances: — The pauper was a cripple settled in *Arundel*, and his mother in the first instance applied to *Barber*, and expressed a wish that her son might be placed with him as an apprentice. The pauper, at the time when the indenture was executed, was eighteen years of age, and had been, for about a year before, and was then in *Arundel* workhouse, from whence he went to the attorney's office, where the indenture was executed, and met there his father and the parish officer; and it was agreed between *Barber* and the parish officer, that the pauper should go into the service of *Barber*, and that the parish should pay the sum of 40*l.*, which was paid accordingly out of the fund belonging to *Arundel*. The pauper's father was present when the indenture was executed, and it was read over at the time. The pauper stated at the sessions that he had not been previously consulted, and that it was not with his good will that he went into the service, but that he never expressed to any one any objection to being bound. *Barber* at the time of the execution of the indenture, lived at *Patching*, and continued there a year and a half afterwards, and then removed to *Ferring*, accompanied by the pauper, who continued in that parish with his master, under the indenture, for nearly a year. The sessions considered the pauper as having been put out by the parish, and that, under these circumstances, the indenture was void. After argument, *Lord Ellenborough*, C.J. said, This indenture must be considered clearly as for the infant's benefit; and not having been vacated, it must be considered as binding, so as to confer a settlement on him by reason of his service under it. This was not the binding of a parish apprentice; it was to a person not residing in the parish; and all that the parish officers did was the advancing of 40*l.* as the premium. As to any supposed controlling influence of the parish officers, I do not see how we can enter upon that subject, nothing being stated concerning it in the case. The influence, however, seems to have been that of the mother; the parish officers make the advance, and the pauper executes the indenture. I think the binding was undoubtedly for his benefit, and therefore valid. — *Bayley* J. The pauper executed the deed without objection, and there was not any compulsion used at that time. Order of sessions quashed. [But see stat. 56 *G*.3. c.139. § 5 & 6. *ante*, p. 140. which statute has passed subsequently to this decision.]

cause it is for his benefit; and though he be a pauper in the parish workhouse at the time of the binding, and the parish officers pay the premium, yet it is not necessary that they should sign the indenture, or that the justices should assent thereto, if the apprentice be not a parish apprentice within the meaning of the statute 43 Eliz. c.2.

Power to take.

And all persons, to whom the overseers shall by the 43 *El.* bind any children apprentices, may take and keep them as apprentices; stats. 21 *J. c.*28. 3 *C. c.*4. § 22.

(*a*) The indenture began, "This indenture witnesseth, that *G. Slater*, of *Arundel*, in the county of *Sussex*, aged nearly eighteen years, of his own free will doth put himself apprentice to *C. Barber*, of *Patching*, cordwainer, &c. for four years, &c. and the said *C. Barber*, in consideration of the sum of 40*l.* to him in hand paid, &c."

32 G.3. c.57. Proviso to be inserted in indentures, in case the master should die.

By stat. 32 *G*.3. *c*.57. after reciting that in indentures of parish apprentices, it hath been usual to insert several agreements and covenants to be done and performed by the several parties thereto, and amongst other things that the master shall, during the term of such apprenticeship, find and allow to such apprentice sufficient meat, drink, apparel, lodging, and all other things needful for an apprentice; it is enacted, that in all parish indentures which shall be made after 1st *July*, 1792, where no more than 5*l*. shall be given with such apprentice, there shall be annexed to the covenant in such indentures for such maintenance as aforesaid a proviso (*a*) declaring that such covenant shall not be made to continue and be in force longer than three calendar months next after the death of such master, in case he shall die during the term of such apprenticeship; and in case such proviso be omitted in such indenture, the covenant for maintenance shall be in force for no longer time than three calendar months next after the death of such master, any thing in any such covenant to the contrary notwithstanding. Vide post, § xi.

If omitted, covenant of master continues only three calendar months.

8&9 W. c.30. Persons refusing to take parish apprentices. Poor children bound apprentices pursuant to 43 Eliz. c.2. those to whom they are bound, to provide for them according to the indenture signed by the justices, &c. Penalty on offender.

By stat. 8&9 *W*. *c*.30. § 5., reciting stat. 43 *Eliz*. *c*.2. § 5. "*but there being doubts whether the persons to whom such children are to be bound, are compellable to receive such children as apprentices, that law hath failed of its due execution;* it is enacted and declared, "That where any poor children shall be appointed to be bound apprentices pursuant to the said act, the person or persons, to whom they are so appointed to be bound, shall receive and provide for them, according to the indenture signed and confirmed by the two justices of the peace, and also execute the other part of the said indentures; and if he or she shall refuse so to do, oath being thereof made by one of the churchwardens or overseers of the poor, before any two of the justices of the peace for that county, liberty, or riding (F a), he or she for every such offence shall forfeit the sum of 10*l*., to be levied by distress and sale of the goods of any such offender, by warrant (G) under the hands and seals of the said justices, the same to be applied to the use of the poor of that parish or place where such offence was committed; saving always to the person, to whom any poor child shall be appointed to be bound an apprentice, as aforesaid, if he or she shall think themselves aggrieved thereby, his or her appeal to the next general or quarter sessions of the peace for that county or riding,, whose order therein shall be final, and conclude all parties."

Persons to whom poor children are bound, being aggrieved, may appeal to the justices.

Execute the other part of the indentures.] But it was holden that a pauper was, notwithstanding, settled under indentures which were not executed by the master, and of which there was no counterpart. *Rex* v. *Fleet*, *Cald*.31. 2 *Bott*.371.

Indictment lies for refusing to receive a parish apprentice.

Forfeit 10*l*. *by distress and sale.*] Although the statute directs the penalty to be levied by distress, &c. yet an indictment lies for disobeying an order of justices, either in not receiving, or receiving and afterwards turning off, or not providing for a parish apprentice; for though an act of parliament prescribe an easier way of proceeding by complaint, yet it does not hinder an indictment. *Reg*. v. *Gould*, 1 *Salk*.381. 6 *Mod*.164. 1 *Bott*.605.

Who are compellable to take.

And as the churchwardens and overseers have power to place

(*a*) This proviso is added to the form of indenture (B) post.

out poor children, they are the proper judges of persons who are fit to be their masters; and those are, all persons who, by their profession or manner of living, have occasion to keep servants; but the same are to be approved of by the justices, and if such master be dissatisfied, he may appeal to the sessions. *Dalt. c.*58. p.143.

So, the justices may force a master to take a parish apprentice; for the power to compel is consequent to their authority to put him out. *Anon.* 1 *Bott.*604.

Minchamp's Case, 2 *Salk.*491. 1 *Bott.*605. Two justices bound an apprentice to a *merchant:* he appealed to the sessions, and the order was discharged. And the court of K. B. confirmed the order of sessions; because the act having made persons compellable to take apprentices, and given an appeal to the sessions, it was in the discretion of the justices at sessions to determine whether it was or was not fitting to put an apprentice upon any one.

Gentlemen of fortune and clergymen are equally liable with others to take parish apprentices. 1 *Bla. Com.*426.

Occupiers of tithes are liable to take parish apprentices, 2 *Nolan.*221. citing *Rex* v. *Saltren, Cald.*444.

5 G.4. c.13. Officers not liable to have parish poor apprenticed to them.

Stat. 5 *G.*4. *c.*13. (The mutiny act) § 113. enacts that no officer of H. M.'s forces, residing in barracks or elsewhere under military law, shall be deemed liable to have any parish poor child bound apprentice to him; but that every such officer shall be wholly exempt from taking or receiving, or from having bound to him any such child as an apprentice, any law, statute or usage to the contrary notwithstanding.

Persons occupying lands *in* the parish, but residing *out of* it, are compellable to receive parish apprentices.

An occupier of lands within the parish, although residing elsewhere, is bound to accept a parish apprentice.—So ruled in the following case. The parish officers of *Sowton, Devon,* having apprenticed *S. Helier,* a poor child of *Sowton,* to the defendant, according to the statute, he appealed to the sessions, who confirmed the order, subject to the opinion of the court on the following case.—The apprentice was bound (*prout* the indenture) to the appellant, who resided in the parish of *Pinhoe* on an estate which he rented and occupied in the parish of *Sowton* of 20*l. per annum,* which was divided by the highway from the house in which he lived. There was no house on the estate of which he was the occupier. The indenture, together with the apprentice, was tendered to the appellant in the parish of *Sowton,* in the highway adjoining to the said estate lying in the parish of *Sowton.*—After argument, L. *Kenyon* C.J. said, It is highly fit that this question should not remain any longer undecided. The question arises on 43 *Eliz. c.*2. § 5. The general purview of that statute was to make a provision for the maintenance of the poor; and the first clause, in mentioning those who are to contribute to such maintenance, describes two sorts of persons, namely, *inhabitants* and *occupiers of lands,* &c. Amongst other provisions for the poor the 5th § gives power to the parish officers, with the assent of two magistrates, to bind poor children apprentices *where they shall see convenient.* It is true, indeed, that those words cannot be taken so generally as they purport, because they cannot compel mere strangers, who stand in no relation to the parish, to take such apprentices. But I think that the context of the statute furnishes

Purview of 43 Eliz. c.2.

Mere strangers not compellable to take apprentices.

the means of circumscribing the general extent of those words: and that context I take from the first clause, which imposes other burdens of the same nature on *occupiers of lands*, &c. as well as inhabitants. The general object of the act was to compel all those, who had any property in the parish, to contribute their due proportion towards the maintenance of the poor, and the receiving of apprentices is one mode of contributing to their general relief. In construing these words, I see no reason for confining the power of binding to the *inhabitants* of the parish; they ought to be extended to persons *occupying lands in the parish, though residing out of it*. Then it is said that if this construction be put upon the statute, the party may be doubly charged; in the parish where he lives in respect of his inhabitancy, and in that in which he has lands, in respect of his occupation of them. But if he find himself aggrieved he may appeal to the sessions; and we must take it for granted that the justices will do what is right. They are to adapt the charge to the size of the property, which the person charged possesses; and these are incidental charges which fall on him in respect of that property. I remember it was argued in a former case on this subject, that, if this construction of the statute were to prevail, some parishes would disburden themselves of many of their poor by apprenticing out their poor children to persons living out of the parish: but the answer to any such argument is, that at the time when the 43 *Eliz.* was passed, the stat. 13 & 14 *C.*2. was not in existence. However, the ground of my decision here is, that this is one of the modes provided for the maintenance of the poor in this statute, which imposes the duty in respect of the property. The other judges concurred. Order of sessions confirmed, *Rex* v. *Clapp, H.* 29 *G.*3. 3 *T.R.* 107. and see *Id.* 523. 1 *Bott.* 619.

Charge to be adapted to the size of the property.

And in *Rex* v. *Barwick, M.* 37 *G.*3. 7 *T.R.*33. 1 *Bott.*624. it was determined, that where several persons hold lands in partnership, some of whom actually reside upon and occupy the same, and others reside at a distance in another parish, the latter as well as the former are obliged to take parish apprentices, if in other respects they are fit persons to take them.

Master an infant.

And though the master to whom a poor apprentice is bound be an infant, the indenture of apprenticeship is not absolutely void, but only voidable. *Rex* v. *St. Petrox, Dartmouth.* 4 *T.R.*198.

32 G.3. c.57. Master having been convicted of misusing his apprentice, not to have another put upon him, but to pay not exceeding 10*l.* nor less than 5*l.*

By stat. 32 *G.*3. *c.*57. § 12. Where any parish apprentice shall have been discharged for misbehaviour in the master, and such master shall have been convicted of such offence on indictment, or found guilty on an action at law, the churchwardens and overseers shall not bind any other apprentice upon such person; but when he ought or would be compellable to take a parish apprentice, two justices of the county, &c. or place, on application by such churchwardens and overseers, may order that such person shall pay into the hands of such churchwardens and overseers any sum not exceeding 10*l.* nor less than 5*l.* for the purpose of binding out such child (intended to be bound) an apprentice, with the approbation of such justices; and on his refusing payment thereof, such justices may levy the same by distress, together with the reasonable expenses.

A master is not compellable to

It was moved to quash an order to compel a person to take an apprentice, because in the close of the indenture it was said ‘ that

the master, at the end of the term, shall give his apprentice two suits of clothes.' Upon debate, the Court held this to be ill; for the justices during the term of his apprenticeship cannot order him *wages*, they must only order him a *maintenance* as an apprentice, and cannot order him any thing after the term is ended. So the order was quashed. *Reg.* v. *Wagstaff, Fol.* 205. 1 *Sess. C.*48. 1 *Bott.*605.

give to his apprentice, forced upon him, wages or clothes at the end of the term.

By stat. 32 *G.*3. *c.*57. § 7. After reciting, that it frequently "*happens that persons are compellable, under and by virtue of the act of the ninth and tenth years of king* William, *to take a greater number of parish apprentices than it is convenient for them to maintain or employ in their own families, and they are therefore forced to place out or assign over such apprentices to other persons; and it is proper that such assignment should be legally made, under the inspection and control of the magistrates, as well for the benefit of the apprentice, as that the original master may be discharged from his covenants in respect of such apprentice; and it is fit that the person to whom such assignment shall be made, and also the apprentice, shall be made subject to the ordinary jurisdiction of justices of the peace with respect to masters and parish apprentices;*" it is enacted, "That it shall and may be lawful for any master or mistress of any such parish apprentice as aforesaid, by indorsement on the indenture of apprenticeship, or by other instrument in writing, by and with the consent of two justices of the peace of the county, city, town, riding, division, or place, where such master or mistress shall dwell, testified by such justices under their hands, to assign such apprentice to any person who is willing to take such apprentice for the residue of the term mentioned in such indenture of apprenticeship: Provided always, that such person to whom such apprentice is intended to be assigned, shall at the same time by indorsement on the counterpart of such indenture, or by writing under his or her hand, stating the said indenture of apprenticeship, and the indorsement and consent aforesaid, declare his or her acceptance of such apprentice, and acknowledge himself, herself, his or her executors and administrators, to be bound by the agreements and covenants mentioned in the said indenture, on the part of the master or mistress of such apprentice to be done and performed; which indorsement or instrument may be in the forms or to the effect mentioned in the schedule hereunto annexed [see Forms H. and I.]; and in such case such apprentice shall be deemed and taken to be the apprentice of such subsequent master or mistress to whom such assignment shall be made, to all intents and purposes whatsoever, and so from time to time, as often as it shall be necessary or convenient for any such subsequent master or mistress to part with any

32 G.3. c.57. Parish apprentices, forced upon masters, may be assigned with the consent of two justices.

Assignment by indorsement of the master on the indenture.

H. I.

(*a*) N.B. Stat. 32 *G.*3. *c.*57. § 7. directs that apprentices *forced* upon masters may be assigned, &c. And then § 9, *post*, p. 154. seems extraordinary, that it is not to extend to any parish apprentice with whom *more* than 5*l.* shall be given. No stamp duty is required by § 10.; yet by the 55 *G.*3. *c.*184. sched. part 1. the exemptions from the stamps are only where the assignment is *without* "such valuable consideration." Scarcely any one has an apprentice bound on him, and can "get rid of him" for so little as 5*l.* The 32 *G.*3. *c.*57. § 10. says, that *no* stamp duty shall be required on *assignments under this act.* It is difficult to reconcile these enactments; some think a stamp necessary; others that none is requisite.

32 G.3. c.57.

such apprentice; and all justices of the peace shall have the like power and authority, in the several cases last mentioned, with respect as well to the subsequent master or mistress, masters or mistresses, as to the apprentice, as such justices shall then have by any law for regulating parish apprentices."

Rex v. *Barleston, K. B. E.* 1822. 4 *B. & A.* 780. Where a parish apprentice was assigned before the passing of 56 *G.*3. *c.*139., but for want of consent of two magistrates in writing under 32 *G.*3. *c.*57. § 7. the instrument was not valid to confer a settlement: (see Vol. IV. tit. Poor, § IX. 11.) the court of K. B. held, that though the assignment might be for many purposes inoperative, yet that it manifested a consent of the first master to a service with the second, and rendered that a service under the original binding. And see *R.* v. *St. Petrox, ante,* 152. and *R.* v. *East Bridgeford, Burr. S. C.* 133. *infra,* § IX. and Vol. IV. § IX. 10, 11.

32 G.3. c.57. Justices may discharge apprentices where masters become insolvent, &c.

Stat. 32 *G.*3. *c.*57. § 8. "And whereas no express provision has been made for the discharging of any such parish apprentice from a master or mistress who is become insolvent, or is so far reduced in his or her circumstances as to be unable to employ or maintain such apprentice, be it enacted, that it shall and may be lawful for two justices of the peace of the county, city, town, riding, division, or place where any such master or mistress shall live, on the application of such master or mistress, requesting that any such apprentice may be discharged, for the reasons aforesaid, to enquire into the matter of such allegations, and to discharge any such apprentice from his apprenticeship, in case the said two justices shall find such allegations to be true."

Not to extend to apprentices with whom more than 5*l.* shall be given.

§ 9. Provided that nothing herein shall extend to any parish apprentice with whom more than 5*l.* shall be given, but the same shall remain subject to the like rules and regulations as if this act had not been made.

Stamp duty.

§ 10. Provided also, that no indorsement made in pursuance of this act shall be chargeable with any stamp duty.

4 G.4. c.25.

By stat. 4 *G.*4. *c.*25. § 6. No stamp duty shall be charged on any transfer to a master of a registered vessel of an apprentice bound to the sea service, by indorsement on his indenture. (See § VII. *post.*)

56 G.3. c.139. Provisions of 32 G.3. c.57. enforced with respect to assigning or discharging apprentices.

By stat. 56 *G.*3. *c.*139. § 9. After reciting, that "whereas it may be expedient that those to whom parish apprentices are bound or assigned should be empowered to place out or assign over such apprentice to others, and it is proper that such placing out or assignment should in all instances be under the inspection and control of the magistrates; and it is fit that the person to whom such putting out or assignment shall be made, and also the apprentice, shall be made subject to the ordinary jurisdiction of justices of the peace, with respect to masters and parish apprentices; and it is inexpedient that any master or mistress should in any way discharge or dismiss from his or her service, any parish apprentice without the consent of such justices;" it is enacted, "That from and after the 1st of *October*, in the year 1816, it shall not be lawful for any master or mistress to put away or transfer any parish apprentice to any other, or in any way to discharge or dismiss from his or her service any parish apprentice without such consent of justices, as is directed in an act passed

in the thirty-second year of the reign of *G.3.*, intituled *An act for the further regulation of parish apprentices;* and that no settlement shall be gained by any service of such apprentice, after such putting away or transfer, unless such service shall have been performed under the sanction of such consent as aforesaid." 56 G.3. c.139.

§ 10. "Any person or persons, who, after the 1st of *October* 1816, shall put away or transfer any parish apprentice to another, or who shall in any way discharge or dismiss from his or her service any parish apprentice without such consent as aforesaid, shall forfeit a sum not exceeding 10*l.* for every apprentice so transferred."

Penalty on discharging apprentices without the consent of justices, 10*l.*

By stat. 20 *G.3. c.*36. § 1. In hundreds or other districts incorporated by particular acts of parliament for relief of the poor, where, by such acts, power is given to bind poor children apprentices, the respective persons, to whom they shall be appointed to be bound, shall receive and provide for them according to the indentures to be executed by the directors and acting guardians, and shall execute the counterpart of such indentures: And if any person shall refuse or neglect to receive and provide for such apprentice, or to execute such a counterpart, he shall, on conviction on the oath of one of the directors or acting guardians, or other credible witness, before two justices, forfeit 10*l.* to the poor within such incorporated district, to be levied by distress. Saving always to such person his appeal to the next sessions, whose order therein shall be final.——§ 2. Provided that nothing herein shall extend to compel any person to take any such poor child apprentice, unless he be an inhabitant and occupier of lands, tenements, or hereditaments in the parish to which such child belongs.

20 G.3. c.36. Binding in incorporated districts.

Unless he be an inhabitant and occupier.] *Rex* v. the Directors and Guardians of the poor within the hundreds of *Tunstead* and *Happing* in *Norfolk*, incorporated by 25 *G.3. c.*27. 3 *T. R.* 523. 1 *Bott.* 622. The directors, under the powers given them by that act, bound a poor male child apprentice to one *Reynolds*, who was an occupier of land, but not an *inhabitant* within the said hundreds. He appealed to the sessions, who were of opinion that he was not bound to receive the apprentice, because he was not an inhabitant as well as an occupier. But the Court of K. B. said, that incorporated districts under particular statutes, were to be governed, as to binding out apprentices, by the same rule as other places. That for some purposes *inhabitants* and *occupiers* are synonimous terms; that where a person derives a benefit from property which he occupies in a parish, he is liable to contribute to the ease of it. If indeed the legislature had used imperative words, the court must have been bound by them, but there are none such in this statute. Order of sessions quashed.

By stat. 42 *G.3. c.*46. § 8. (*a*) In order to obviate doubts, whether the provisions of the 20 *G.3. c.*36. extended to apprentices bound under the authority of the several acts which have since passed, by which houses of industry, or establishments for the poor, have been authorised to bind apprentices, the powers of that 42 G.3. c.46.

(*a*) See also Settlement by Apprenticeship, tit. Poor, Vol. IV.

act are extended to poor children bound under the authority of any subsequent act.

Compulsory hiring.

Rex v. *Stowmarket. H.* 48 *G.*3. 9 *East*, 211. It appeared that the pauper was a poor boy of the age of fourteen, in the house of industry for the poor of the incorporated hundred of *Stowmarket:* that the guardians of this house were empowered by their incorporating act to apprentice poor children for seven years: that it did not appear that they had ever exercised this power, but instead of binding out the children, they were sent to their respective parishes: the pauper was sent to one *R.* of *Stowmarket*, to whom he had been allotted by the officers of that parish: this person told the pauper he had procured him a service with one *F.* of *Coddenham*. The pauper did not object, conceiving he had no discretion on the subject. On the day after *Michaelmas* he went to *F.* who received him, and told him he would give him cloaths, and that he was to stay with him a year. The pauper did stay the year, receiving cloaths, maintenance, and a little pocket money.—And *Per Lord Ellenborough* C. J. (who reprobated this practice of the directors allotting children out, instead of providing for them in the manner pointed out by the act.) The adoption of a contract must be the act of a free agent; and it appears from the circumstances of the pauper's making no objection or agreement, conceiving that he had no discretion on the subject, and that he was obliged to accept the service as being under the control of others, that he cannot be considered as having *adopted* the act of his master.

Poor child allotted instead of bound.

V. Registry of Parish Apprentices.

42 G.3. c.46.

By stat. 42 *G.*3. *c.*46. after reciting the power given by the 43 *Eliz. c.*2. to overseers of the poor to bind out poor children apprentices: and that " whereas it would tend to the benefit of the children so bound as apprentices, if the overseers of the poor were required to keep a register of all children who shall be so bound:" it is enacted, " that the overseers of the poor of every parish, township, or place, appointed by virtue of the said recited act, passed in the forty-third year of the reign of queen *Elizabeth*, shall, from and after the 1st day of *June* 1802, and they are hereby required to provide and keep a book or books, at the expense of the said parish, township, or place, and to enter, or cause to be entered therein, the name of every child who shall be bound out by them respectively as an apprentice, together with the several other particulars, in manner and form required by this act, according to the schedule hereunto annexed; and every such entry, when made in the said register, shall be produced and laid before the two justices of the peace who shall signify their assent to the indenture of apprenticeship, of every such child, at the time when such indenture shall be laid before such justices for their assent, as required by the said recited act; and each entry in the said register shall, if approved of by such justices, be signed by them according to the form marked in the schedule." (K.)

The overseers of the poor shall keep a book for entering the name of every apprentice bound out by them, and each entry shall be signed by two justices, according to the form in the schedule.

(K.)

§ 2. " If any overseer or overseers of the poor shall refuse or neglect to provide and keep such book or books, or to make such entry therein as before directed, or shall destroy, or permit, suffer, or cause to be destroyed, any such book or books, or shall wilfully

Penalty for not providing such book, or neglecting to make such entries therein, &c.

and knowingly obliterate, deface, or alter any such entry, so that the same shall not be a true entry of the several particulars hereby required, or shall wilfully and knowingly make a false entry therein, or shall so permit, suffer, or cause the same to be done, or shall not produce or lay such book or books before such justices as aforesaid for their signatures, or shall not deliver or tender, or cause to be delivered or tendered, such book or books to his, her, or their successor or successors in office, within fourteen days after the appointment of such successor or successors, or if any such successor or successors shall refuse or neglect to receive the same when offered or tendered to him or them by his or their predecessor or predecessors in office, then and in every such case, every such person so offending shall, for every such offence, on being convicted thereof before any two justices of the peace for the county, city, or place where the offence shall be committed, on the oath of any credible witness (which oath such justices are hereby empowered and required to administer), or on the voluntary confession of the party or parties, forfeit and pay a sum not exceeding *5l.* to be recovered by distress and sale of the goods and chattels of the offender or offenders, by warrant under the hands and seals of the justices before whom the offender or offenders shall be convicted, and the overplus (if any) of the money arising by such distress and sale, shall be returned upon demand to the owner or owners of such goods and chattels, after deducting the costs and charges of making, keeping, and selling such distress; and such penalties and forfeitures shall be applied for the use of the poor of the parish, township, or place, for which such offender or offenders shall be overseer or overseers; and in case such sufficient distress cannot be found, or such penalties and forfeitures shall not be paid forthwith, it shall and may be lawful to and for such justices, by warrant under their hands and seals, and they are hereby required to commit every such offender to the common gaol or house of correction of the county, city, or place where the offence shall be committed, there to remain without bail or mainprize, for any time not exceeding one calendar month, unless such penalties and forfeitures shall be sooner paid and satisfied."

42 G. 3. c. 46.

§ 3. "It shall be lawful for any person or persons, at all seasonable hours, to inspect such book or books in the hands of the said overseer or overseers, and to take a copy of such entry in such book or books, upon payment of the sum of sixpence, except in case of any of his majesty's justices of the peace acting in and for the said county, who shall be entitled at all such times to inspect such book *gratis*; and every such book shall be and be deemed to be sufficient evidence in all courts of law whatsoever, in proof of the existence of such indentures, and also of the several particulars specified in the said register respecting such indentures, in case it shall be proved to the satisfaction of such court that the said indentures are lost or have been destroyed."

Books may be inspected.

Books to be deemed evidence of indentures, if lost, &c.

§ 4. The justices before whom any person shall be convicted by virtue of this act, shall cause the conviction to be drawn up in form (L.)

(L.)

§ 5. "Whenever any such apprentice shall be assigned or bound over to any other master or mistress by virtue of an act

When assignment of appren-

42 G.3. c.46.

tices shall take place, an entry thereof shall be made in such book in manner herein directed.

passed in the thirty-second year of the reign of *G.3.* (*a*), intituled *An act for the further regulation of parish apprentices*, then and in every such case, the overseer or overseers, party or parties to the assignment of such apprentice, shall insert the name and residence of the master or mistress, to whom such apprentice shall be assigned or bound over as aforesaid, together with the other particulars, in the book or books herein directed to be provided and kept by such overseer or overseers; and for non-performance thereof, every such overseer or overseers shall be liable to the pains, penalties, and forfeitures incurred by this act, in like manner as if such apprentice had been originally bound to such master or mistress."

Persons having like powers as overseers of the poor to bind out apprentices shall comply with the directions of this act.

By § 6. Reciting, "and whereas by different acts of parliament the like powers are given to certain persons therein named, for binding out parish apprentices, as are given to the overseers of the poor;" it is enacted, "that such several persons shall be subject to the like pains, penalties, and forfeitures for non-compliance with the several provisions, and directions in this act contained for registering any parish apprentice bound out or assigned by them respectively, to which overseers of the poor are subject and liable by virtue of this act, for non-compliance with such provisions and directions."

Appeal may be made to quarter sessions.

§ 7. "If any person or persons shall think himself, herself, or themselves aggrieved by any thing done in pursuance of this act, it shall and may be lawful to and for such person or persons to appeal to the justices at the first general quarter sessions of the peace to be holden for the county or place where the cause of appeal shall arise, within four calendar months next after the cause of appeal shall have arisen, on giving to the person or persons appealed against ten days notice of such appeal, and of the matter thereof; and the justices at such sessions are hereby authorised and required to hear and determine the matter of such appeal in a summary way, and to grant such costs and expences to either party as to them shall seem reasonable."

VI. Money given to bind out poor Apprentices.

7 Jac.1. c.3.

By the 7 *J. c.*3. § 2. All sums of money given by any person to be continually employed for the binding out apprentices shall be employed in manner following, unless otherwise ordered by the givers, *viz.* all corporations of cities, boroughs, and towns corporate, and in places not corporate, the parson or vicar, constables, churchwardens, collectors, and the overseers, or the most part of them, shall have the nomination and placing of such apprentices, and the guiding and employment of such monies; and if they shall not employ the same accordingly, every person offending shall forfeit 3*l.* 6*s.* 8*d.*, half to the poor, and half to him that shall sue, by action of debt, bill, plaint, or information.

§ 3. The master that shall receive the money shall be bound with one or two sureties in double the sum unto such corporation, or to the other persons appointed by this act in places not corporate, to take the ordering of it, on condition to repay it at the end of seven years, or within three months thereof; and if the appren-

(*a*) Ante, p. 150, 152, 153.

tice shall happen to die within the seven years, then within one year after such death, and if the master shall die within the seven years, then within one year after such master's death.

7 Jac. 1. c. 3.

§ 4. The said money shall always be put forth in three months after it shall come to the said parties hands; and if there be not then fit persons to be bound apprentices within the places where the money is given to be employed, it shall be disposed of for binding some of the poorest children of any adjoining parish, after the same manner.

§ 5. And choice shall always be made of the poorest children; and no such apprentice shall be above 15 years of age when bound.

§ 6. The said persons in places not corporate shall yearly within a month after *Easter* account before four, three, or two justices for the said monies, and within ten days after such accounting, yield up the monies and bonds remaining in their hands.

§ 7. And if any of the trustees shall break their trust, or commit any offence for which no penalty is given by this act, any person may petition the lord chancellor, who may issue a commission to hear and determine the same, and may levy the money misemployed upon such defaulters, or otherwise upon such able inhabitants of the place, as they shall think fittest; and persons aggrieved may appeal to the lord chancellor.

VII. Binding poor Apprentices to the Sea Service.

2&3 Ann. c.6. Who may be bound.

By stat. 2 & 3 *Ann.* *c.*6. § 1. It shall be lawful for two justices, and also for the head officers in corporations, and likewise for the churchwardens and overseers of the several parishes or townships, with the consent of such justices or head officers, to bind and put out any boy at the age of 10 years or upwards, who shall be chargeable, or whose parents shall be chargeable, or who shall beg for alms, to be an apprentice to the sea-service, to any subject being master or owner of any ship or vessel, until he shall attain the age of 21 years.

Parish boys bound apprentices may be turned over to the sea service.

§ 6. Every person to whom any poor parish boy shall be put apprentice by the 43 *Eliz.* may, with the consent of two justices dwelling near the parish where such poor boy was bound, or with the like consent of the chief officer in a corporation, at the request of the master, his executors, administrators, or assigns, by indenture, assign over such poor boy apprentice to any master or owner of a ship or vessel using the sea service during the remaining time of his apprenticeship.

Who shall take.

§ 8. And every master or owner of a ship, from 30 to 50 tons burden, shall be obliged to take one such apprentice, and one more for the next 50 tons, and one more for every 100 tons such ship shall exceed the burden of 100 tons: on pain of forfeiting 10*l.* to the poor of the parish from whence such boy was bound.

4 Ann. c. 19. Age of apprentice.

By stat. 4 *Ann.* *c.*19. But no master shall be obliged to take any such apprentice under 13 years of age, or who shall not appear to be fitly qualified both as to health and strength of body for that service.

4 G.4. c.25.

And now by stat. 4 *G.*4. *c.*25. § 2. from 1st *January* 1824, every master of any merchantship exceeding 80 tons-burthen, shall have

4 G. 4. c. 25.

Number of apprentices on board ships, proportioned to tonnage.

on board his ship at clearing out from any port of (*a*) the U.K. called G. B., one apprentice or apprentices in the following proportion to the number of tons of her admeasurement according to the certificate of registry; *i. e.* for every ship exceeding 80 and under 200 tons one apprentice at least; for every ship of 200 and under 400 tons two apprentices at least; for every ship of 400 and under 500 tons three apprentices at least; for every ship of 500 and under 700 tons four apprentices at least; for every ship of 700 tons and upwards five apprentices at least, who shall, at the period of being indentured, respectively be under the age of 17 years. Provided that every apprentice so to be employed on board any ship as above described shall be duly indented for at least four years, and his indenture or indentures shall be duly enrolled with the collector and comptroller at the custom-house of the port from whence any such ship shall first clear out after the execution. [See the penalty on masters for not enrolling the indentures, § 4. *post*,]

Time of apprenticeship enrolled.

Proviso for acts, by which ships are required to have apprentices on board.

§ 3. Enacts, that nothing in this act shall extend to alter or affect any act now in force and not amended or repealed (*b*) by this act, whereby any ships are required to have on board apprentices, and that such apprentices as shall be on board any ships conformably to the regulations of any such act, shall be counted, deemed, and reckoned in the number required by this act.

2 & 3 Ann. c. 6. Age to be inserted in the indenture.

By stat. 2 & 3 *Ann.* c. 6. § 1. The boy's age shall be inserted in the indenture, being taken truly from a copy of the entry in the register-book (where it can be had), which copy shall be given and attested by the minister without fee: And where no such entry can be found, two such justices, and such head officers, shall as fully as they can inform themselves of such boy's age, and from such information shall insert the same in the indentures.

What money shall be given with him.

§ 2. And the churchwardens and overseers shall pay down to the master, at the time of the binding, the sum of 50*s.* for cloathing and bedding; and the charges by this act appointed shall be allowed on their accounts.

Indentures to be registered.

§ 5. The churchwardens and overseers shall send the indentures to the collector of the customs at the port whereunto the master belongeth; who shall enter the indenture in a book, and make an indorsement upon the indenture of the registry thereof, subscribed by him, without fee. And if he shall neglect or refuse to enter such indentures, and indorse the same, or shall make false entries, he shall forfeit 5*l.* to the poor of the parish from whence such boy was bound.

Apprentice how conveyed to the port.

§ 10. Such apprentice shall be conveyed to the port to which his master belongeth by the churchwardens and overseers or their agents; and the charges thereof shall be paid as by the vagrant act of 11 & 12 *W.* c. 18.

That is to say, out of the gaol and marshalsea money; which (since the repeal of stat. 12 *G.* 2. c. 29. § 1. as to this subject by 53 *G.* 3. c. 113. § 1.) is directed by 53 *G.* 3. c. 113. § 2. to be paid out of the general county rate. See Vol. II. tit. Gaols.

Counterpart to be then executed

§ 11. The counterpart of the indenture shall be sealed and executed by the master, in the presence of and attested by the col-

(*a*) So in the act. *Quære*, read, "that part of."

(*b*) By § 1. So much of stat. 37 *G.* 3. c. 73. as requires the master of any ship trading to H. M.'s colonies, &c. in the *West Indies* to have on board an apprentice or apprentices (*viz.* § 4.) is repealed.

lector at the port and the constable or other officer who carries the apprentice; which officer shall transmit such counterpart to the churchwardens and overseers of the place from whence the apprentice was bound.

2&3 Ann. c.6.

§ 5. The collector or his deputy shall transmit a certificate under his hand to the commissioners of the admiralty, containing the name and age of such apprentice, and to what ship he belongs; and on receipt of such certificate a protection shall be made and given *gratis* to such apprentice, till he attain the age of 18 years.

Protection from being impressed.

By stat. 4 *G*.4. *c*.25. § 4. Every apprentice enrolled as in § 2. *ante*, p. 160. is exempted from serving in H. M.'s navy till he has attained the age of 21 years, provided he is regularly serving his time either with his first master or ship owner, or some other master or ship owner to whom his indentures shall have been regularly transferred; and every owner or master who shall neglect to enrol such indenture or indentures (as in § 2. *ante*, p. 160.) or who shall suffer any such apprentice to leave his service, except in case of death or desertion, sickness, or other unavoidable cause, to be certified in the log book after the vessel has cleared outwards on the voyage on which bound, shall for every offence forfeit the sum of 10*l*., to be paid one moiety by the owner or owners of such ship, and the other by the master or masters thereof, to be levied, recovered, and applied in manner herein-after mentioned.

4 G.4. c.25.

Master not enrolling indentures or suffering apprentice to leave his service, penalty 10*l*.

§ 8. Enacts, That the above forfeiture shall be paid and applied in manner following, *i. e.* one third to Greenwich Hospital; one third to the Seamen's Hospital at the port to which the vessel in respect of which the forfeiture shall arise belongs; but in case there shall be no such Seamen's Hospital at that port, then to and for the use and benefit of the old and disabled seamen of the same port and their families, to be distributed at the discretion of the persons having the direction of the merchant seamen's fund at such port, or in case there shall be no such establishment there, by the magistrates or overseers of the poor of such port; and the other third part thereof to and for the person or persons who shall inform and sue for the same; and that such forfeiture shall be recovered upon information on the oath of one or more witnesses before one or more justices in any part of the U. K., who shall not reside more than ten miles from the abode of the person or persons complained of, which justice and justices is and are hereby required to issue out his or their warrant or warrants to bring before him or them every person charged with any offence under this act; and in case he or they shall refuse or neglect to pay such penalties or forfeitures as aforesaid, to issue his or their warrant or warrants to levy the same by distress and sale of the offender's goods; and in case no distress can be found, to commit the offender or offenders to the common gaol at the city, town, or place within the jurisdiction of such respective justice or justices, there to remain for the space of three calendar months, or until he or they shall pay the same (and see stat. 5 *G*.4. *c*.18. *post*, *tit*. Distress.)

Application of penalties. Greenwich hospital, &c.

Mode of recovery. Oath.

Justice to issue warrant.

§ 5. Enacts, That every person to whom such apprentice shall have been bound, may employ him at any time in any vessel of which such person may be the master or owner, and may also with the consent of such apprentice, if above the age of seventeen, and if under that age, with the consent of his parents or guard-

Apprentice may be employed in any ship whereof his master is captain or owner;

4 G.4. c.25.

may be transferred, how. Stamp.

ians, transfer the indentures of such apprentice, by endorsement thereon, to any other person who may be the master or owner of any registered ship or vessel.

And by § 6, no stamp duty shall be charged on any such transfer by indorsement.

2&3 Ann. c.6. Voluntary apprentice to the sea.

By stat. 2 & 3 *Ann. c.*6. § 15. Also no person who shall voluntarily bind himself apprentice to the sea service shall be impressed for three years from the date of his indentures; which indentures shall be registered, and certificates thereof given and transmitted by the collector as aforesaid; on receipt of which certificates protection shall be made and given for the first three years, without fee.

13 G.2. c.17.

By stat. 13 *G.*2. *c.*17. § 2 & 3. Every person not having before used the sea, who shall bind himself apprentice to serve at sea, shall be exempted from being impressed for three years; and the commissioners of the admiralty, on due proof of the circumstances, shall grant a protection accordingly, without fee.

4 Ann. c.19.

By stat. 4 *Ann. c.*19. § 17. No person of the age of eighteen years shall have any protection from being impressed, who shall have been in any sea service before he bound himself apprentice.

2&3 Ann. c.6. When impressed, the master to have the wages.

By stat. 2 & 3 *Ann. c.*6. § 17., When such parish or voluntary apprentice shall be impressed, or voluntarily enter into the king's service, the owner or master, his executors, administrators, or assigns, shall be entitled to able seaman's wages for such of the apprentices as shall, upon due examination, be found qualified for the same, notwithstanding their indentures of apprenticeship.

Exempted from the 6*d.* a month.

§ 7. Such poor boys bound out, or assigned over, to the sea-service, until they shall attain to the age of eighteen years, shall be exempted from the payment of 6d. a month to *Greenwich* Hospital.

Master to enter his apprentices on clearing out.

§ 9. Every master so obliged to take such apprentice shall, after his arrival into any port aforesaid, and before he clears out of such port, give an account in writing under his hand, to the collector, containing the names and numbers of such apprentices as are then remaining in his service.

The same to be inserted in the cocquet.

§ 14. Every custom-house officer shall insert at the bottom of their cocquets the number of men and boys on board the respective ships at their going out, describing the apprentices by their names, ages, and dates of their indentures, for which no fee shall be taken.

Registry to be kept in the ports.

§ 13. And the collector in the port shall keep a register, containing the number and burden of all ships belonging to the port, together with the masters' or owners' names, and also the names of all such apprentices in such ships, and from what parishes and places they were sent; and shall transmit (*gratis*) true copies thereof, signed by him, to the Quarter Sessions, or to such towns corporate, parishes, or places when, and so often as he shall be reasonably required so to do; and every collector refusing or neglecting to send such copy, shall forfeit 5*l.* to the poor of the parish from whence such boy was bound.

Differences between such masters and apprentices.

§ 12. Two justices near the port, and mayors, all and other chief officers of cities or towns corporate, in or near adjoining to such port to which such ship or vessel shall at any time arrive, may determine all complaints of ill usage from the master to such apprentice, and also of all such as shall voluntarily put them-

selves apprentices to the sea service, and make such order therein as they are now enabled by law to do in other cases between masters and apprentices.

2&3 Ann. c.6.

§ 18. All the penalties aforesaid shall, by warrant of two justices of the county, city, borough, or town corporate, be levied by distress and sale.

Penalties.

By stat. 4 *Ann.* *c.*19. § 16., If any master who hath been obliged to take such parish boy an apprentice shall die during the term, his widow or his executor or administrator may assign over such apprentice to any other master who hath not his complement of apprentices.

4 Ann. c.19. Master dying.

Note. By stat. 2 *G.*3. *c.*15. § 22 & 25., Masters, apprentices, mariners, and others employed in fishing vessels upon the coasts, are exempted, under certain restrictions, during such their employment from being impressed, and see 4 *G.*4. *c.*25. § 4. *ante*, p. 161.

2 G.3. c.15.

Rex v. *Edwards*. *MS.* (*D*) *S.C.* reported 7 *T.R.* 745. An apprentice is protected also from being impressed. Upon shewing cause against a rule obtained for quashing a writ of *habeas corpus*, to bring up the body of an apprentice detained on board a king's ship at the *Nore*. *Per* Lord *Kenyon* & *tot. Cur.* To impress an apprentice is an illegal act: and the party impressed may regain his liberty by applying for an *habeas corpus*, or his master may bring an action for the detention of his apprentice. The writ of *habeas corpus* being a writ specially granted by the legislature for the liberty of the subject, it can be granted only at the instance of the party detained, and not on the application of any other person. Lord *Kenyon* observed, that he remembered Lord *Mansfield* to have said, that for a long time he was not aware that he had a power, as chief justice, to relieve the party by his warrant for his discharge, but that he had been informed by Mr. *Way*, that such a power had existed ever since the time of Lord *Holt*. Lord *K.* declared, that he should not hesitate a moment to grant his warrant on the present occasion, though the writ, having been moved on behalf of the master, and not of the party impressed, must be quashed. An apprentice, his lordship observed, could not even enter voluntarily, for his time was his master's property. *Lawrence* J. mentioned the case of an apprentice who had absconded from his master, and inlisted as a soldier, but was immediately restored upon application to the War-office by his master, in consequence of the apprentice disliking his situation, and expressing a wish to return to his master's service. The War-office, however, though they restored the apprentice, were advised to indict him for taking the bounty. The learned judge said, that Mr. J. *Buller* had informed him that L. *Mansfield* had frequently by his warrant discharged persons in the situation of this apprentice, at the request of their masters. The power to grant such a warrant was given by a clause in some act of parliament, in the time of *H.*7 or 8, he did not recollect exactly which.

If an apprentice be impressed, the master cannot sue out a *habeas corpus*, but the apprentice may.

The L. C. J. may issue a warrant to bring up the apprentice, either on application from the master or apprentice.

VIII. Poor Apprentices bound to Chimney Sweepers.

By stat. 28 *G.*3. *c.*48. § 1. After the 5th *July* 1788, the churchwardens and overseers of the poor of any parish or place, with the consent of two justices under their hands, may bind or put out any boy of the age of eight, altered by stat. 56 *G.* 3. *c.* 139,

28 G.3. c.48. Binding apprentices.

56 G.3. c.139.

28 G.3. c.48.

§ 7. *ante*, p. 140. to nine years or upwards, who is chargeable or whose parents are chargeable to the parish or place where they shall be; or who shall beg for alms; or by and with the consent of the parent of such boy, by indenture, according to the form (A) (*post*, p. 165.) to be an apprentice to any person using the trade of a chimney-sweeper, until such boy shall attain the age of sixteen years. And by § 2. the age of such apprentice shall be inserted in the indenture, taken from a copy of the register, (where the same can be had) attested by the minister without fee, and written on paper without stamp; and where such copy cannot be had, such justices, as fully as they can, shall inform themselves of the age of such apprentice, and the age so inserted, in relation to the continuance of his service, shall be taken to be his true age without further proof.

Age. To be bound till 16.

Stamp.

§ 3. Such indenture shall be liable to no more stamp duty than is charged for binding out other poor children.

Penalty on taking apprentices under eight years of age, and the binding to be void.

§ 4. And all indentures, covenants, promises, and bargains, to be made or taken for employing such apprentice or servant under the age of eight years (*a*), shall be absolutely void in law to all intents and purposes; and every person who shall take, employ, retain, or keep any such boy to be employed in the capacity of a climbing boy or chimney-sweeper, under the age aforesaid, or contrary to the tenor and true meaning of this act, shall, on conviction, forfeit any sum not exceeding 10*l.* nor less than 5*l.* for every such apprentice or servant.

Townships and villages.

§ 5. The overseers of the poor of any *township* or *village* may execute all things by this act directed to be done by churchwardens and overseers of a *parish.*

Justices to determine differences.

§ 6. And one justice may hear and determine all complaints and differences between masters and apprentices in this business, and make orders therein in the same manner as in other cases between masters and apprentices.

Not to have more than six apprentices at the same time.

§ 7. But no such master shall retain, keep, or employ any more than six apprentices at the same time; and shall cause his name and place of abode to be put upon a brass plate to be affixed in the front of a leathern cap, which such master shall provide for each such apprentice, and which he shall wear when out upon his duty, on pain of forfeiting for every such apprentice above such number, or without having such cap, not exceeding 10*l.* nor less than 5*l.*

Breach of the indenture.

§ 8. If any such master shall misuse or evil treat his apprentice, or any such apprentice shall have just cause to complain of the breach of any of the covenants contained in such indenture, such master, being convicted thereof, shall forfeit not exceeding 10*l.* nor less than 5*l.*

Boys not to be let out to hire, nor to call the streets but at certain times.

§ 9. And no such master shall let out to hire or lend by the day or otherwise to any other person for the purpose of sweeping chimneys, any such apprentice; nor shall cause him to call the streets before seven in the morning, nor after twelve at noon, between *Michaelmas* and *Lady-day;* nor before five in the morning, nor after twelve at noon, between *Lady-day* and *Michaelmas-day*, on the like penalty.

(*a*) By stat. 56 *G.*3. *c.*129. § 1. *ante*, p. 140. no child shall be bound parish apprentice before nine years of age.

§ 10. 11. All penalties and forfeitures by this act imposed, and all costs and charges to be allowed and ordered, may be recovered on conviction of the offender before one justice, by confession, or oath of one witness, and levied by distress, and shall be paid, one half to the informer, and the other half to the overseer of the parish or place where the master shall inhabit; and in case sufficient distress cannot be found, and such penalties and costs shall not be forthwith paid, such justice shall commit such offender to the gaol or house of correction where the offence is committed or order made for any time not exceeding three months, unless such penalty and costs be sooner paid.

28 G. 3. c. 48.

Penalties how to be levied and applied.

§ 12. But no warrant of distress shall be issued for levying any penalty or costs until six days after the offender is convicted, and an order made and served upon him for payment thereof.

Warrant of distress not to be issued until six days after the conviction.

§ 13. No distress shall be deemed unlawful nor the party naking the same a trespasser for want of form in the proceedings, nor shall the party distraining be deemed a trespasser *ab initio*, on account of any irregularity which may afterwards be done by the party distraining.

Distress not unlawful for want of form.

§ 16. Any person who shall think himself aggrieved may appeal to the next general or quarter sessions of the peace, having first entered into a recognizance, with sufficient surety before such justice, to prosecute and abide by the order that shall be made on such appeal; and also giving to the justice, by whose act such person shall think himself aggrieved, notice in writing of his intention to appeal, and the matter thereof, within six days after the cause of complaint shall have arisen.

Appeal.

A. Form of the Indenture.

A.

THIS INDENTURE, made the ——— *day of* ——— *in the* ——— *year of the reign of, &c.* ——— *and in the year of our Lord* ——— *BETWEEN* A. B. *and* A. C. *churchwardens and overseers of the poor of the parish of* ——— [or *E. F.* the father or next friend of the boy] *of the one part; and* A. M. *of the parish of* ——— *in the county of* ——— *chimney-sweeper, of the other part; WITNESSETH, that the said churchwardens and overseers of the poor* [or the said *E. F.*] *by and with the consent and approbation of* G. I. *and* H. I. *two of his majesty's justices of the peace acting in and for the* ——— *of* ——— *signified as here underwritten, have put, bound, and by these presents do put and bind* A. P., *a poor boy of the said parish, being of the age of* ——— *years, to be apprentice to the said* A. M., *he being his first, second,* [or as the case may be] *apprentice to learn the trade, business, art and mystery of a chimney-sweeper, and with him to dwell, remain, and serve from the day of the date of these presents, for and during the term of* ——— *years, from hence next ensuing, fully to be complete and ended, during all which time he the said* A. P. *his said master faithfully shall serve and obey, his secrets keep, and his lawful commands every where gladly do and perform; he shall not haunt alehouses or gaming-houses, nor absent himself from the service of his said master day or night, without his leave, but in all things as a faithful apprentice shall behave himself towards his said master and all his during the said term: And the said* A. M. *in consideration of the good will*

Form of Indenture.

which he hath and beareth towards the said apprentice, and of the faithful service so to be performed by him, doth hereby covenant, promise, and agree with the said churchwardens and overseers of the poor, [or the said E. F.] *that he the said* A. M. *his said apprentice, in the art and mystery of a chimney-sweeper, which he now useth, shall and will teach and instruct or cause to be taught and instructed, in the best manner that he can, and shall and will provide and allow unto the said apprentice, during all the said term, competent and sufficient meat, drink, washing, lodging, apparel, and all other things necessary for the said apprentice: And that the said* A. M. *his executors, administrators, or assigns, shall not nor will assign over this present indenture, or the apprentice to be bound thereby, without the consent and approbation, in writing, of two or more such justices of the peace, to be signified according to the form of the approbation here underwritten. AND WHEREAS, from the nature of the business or employment of a chimney-sweeper, it is necessary for the boys, employed in climbing, to have a dress particularly suited to that purpose, which dress is only fit for that part of the occupation, the said* A. M. *doth hereby also covenant, promise, and agree to and with the said churchwardens and overseers of the poor,* [or the *said E. F.*] *to find and allow such suitable dress for the said apprentice, as often as need or occasion shall be and require, and provide for and deliver to the said apprentice, once in every year at least, during the term aforesaid, over and above the said dress proper for climbing, one whole and complete suit of clothing, with suitable linen, stockings, hats, and shoes: AND FURTHER, that the said* A. M. *shall and will, at least once in every week, cause the said apprentice to be thoroughly washed and cleansed from soot and dirt, and shall and will require the said apprentice to attend the public worship of God on the Sabbath day, and permit and allow him to receive the benefit of any other religious instruction; and that the said apprentice shall not wear his sweeping dress on that day: And that the said* A. M. *shall not, nor will compel or oblige the said apprentice to call the streets, or any other places, before seven of the clock in the morning, nor after twelve of the clock at noon, between* Michaelmas *and* Lady-day, *nor before five of the clock in the morning, nor after twelve of the clock at noon, between* Lady-day *and* Michaelmas: *And that the said* A. M. *shall not nor will at any time during the said term, let out his said apprentice for hire by the day, night, or otherwise, to any other person or persons exercising or using the said trade, nor shall he the said* A. M. *or any person or persons whomsoever by his directions, require or force him the said apprentice to climb or go up any chimney which shall be actually on fire, nor make use of any violent or improper means to force him to climb or go up any such chimney; but shall in all things treat his said apprentice with as much humanity and care as the nature of the employment of a chimney-sweeper will admit of. IN WITNESS, &c.*

B.

B. Form of approbation by justices.

WE the above named G. I. *and* H. I., *two of his majesty's justices of the peace acting in and for the county of ——, having inspected and examined the above named* A. P. *do hereby consent*

to and approve of his being bound [*or assigned over*] *as an apprentice to the above named* A. M. *according to the term and stipulations expressed in the above written indenture.*

IX. Assigning Apprentices.

The master assigning, and the apprentice himself consenting, will not make him an apprentice to the assignee within the 5th of *El.*; but by the custom of *London* he may be turned over to another. *Dalt. c.*58. *p.*143. *Rex* v. *Channel,* 1 *Bott.*578.

And an assignment to the sea service is good by stat. 2&3 *Ann. c.*6. § 6. as before mentioned, p. 159.

2&3 A. c.6.

Rex v. *Barnes,* 3 *G.*1. 1 *Str.*48. Order returned on a *certiorari;* it was resolved by sessions, where a person was bound an apprentice to *Barnes* by the parish officers, and *Barnes* had assigned him to another, that the assignment was void, and they directed *Barnes* to take his apprentice again. But by the Court—The sessions had no power to judge of the validity of a deed, or to hinder a man from assigning his apprentice. The covenant to provide for him is well performed, if the person to whom he is bound assign him to another to provide for him. Wherefore the order was quashed.

For the jurisdiction of the justices extends no farther than to compel the master to take care of his apprentice; but in what manner he does it, whether in his own house or otherwise, is nothing to them. But if the assignee of the apprentice doth not provide for him, the first master may be compelled to do it, and he may take his remedy over. *S. C.* 1 *Sess. Cass.*110.

An indenture of apprenticeship, however, is not assignable by law or equity, unless indeed it be by custom; because the person of a man is not strictly or legally assignable. *Baxter* v. *Burfield,* 2 *Str.*1266. 1 *Bott.*581. *Rex* v. *East Bridgeford, Burr. S. C.* 133. 1 *Bott.*581.

But though indentures of apprenticeship be not assignable in strict law, yet for the purposes of gaining a settlement at least, such assignment is not *void,* but *voidable* only, and amounts to a contract between the two masters; so that it is good by way of covenant, but not as an assignment to pass an interest; like the case of assigning a bond, which, though it be not assignable in point of interest, yet it is a covenant that the assignee shall receive the money to his own use. *Caister* v. *Eccles,* 1 *Ld. Raym.* 683. 1 *Bott.*580.

And such assignment requires a stamp; for it is not within the exemption of stat. 23 *G.*3. *c.*58. § 4. which clearly refers to the case of a *hiring*. *Rex* v. *St. Paul's, Bedford,* 6 *T. R.*452. As to the assignment of parish apprentices, see *ante,* p. 138.

X. Differences between the Master and Apprentice.

Master may chastise his apprentice.

A master may by law correct and chastise his apprentice for neglect or other misbehaviour, so it be done with moderation; though it doth not seem to be lawful for the master or mistress to beat any other servant of full age. *Lamb.* 127. 1 *Blac. Com.* 428.

Whether the master himself

The master may not of his own accord discharge his apprentice, but if they cannot agree, they may proceed in one of these

can discharge his apprentice.

two ways, either upon the statute of the 5 *El. c.* 4. or upon the statute of 20 *G.* 2. *c.* 19.

5 Eliz. c. 4. Differences between the master and apprentice. Hearing by one justice.

By stat. 5 *Eliz. c.* 4. § 35. " *If any such master shall misuse or evil intreat his apprentice, or the said apprentice shall have any just cause to complain, or the apprentice do not his duty to his master, then the said master or apprentice being aggrieved, and having cause to complain, shall repair unto one justice of peace within* (N. O.) *the said county, or to the mayor or other head officer of the city, town corporate, market town or other place where the said master dwelleth, who shall by his wisdom and discretion take such order and direction between the said master and his apprentice, as the equity of the cause shall require; and if for want of good conformity in the said master, the said justice of peace or the said mayor or other head officer cannot compound and agree the matter between him and his apprentice, then the said justice, or the said mayor or other head officer, shall take bond of the said master to appear at the next sessions then to be holden in the said county, or within the said city, town corporate or market town, to be before the justices of the said county, or the mayor or head officer of the said town corporate or market town, if the said master dwell within any such; and upon his appearance and hearing of the matter before the said justices, or the said mayor or other head officer, if it be thought meet unto them to discharge the said apprentice of his apprenticehood, then the said justices, or four of them at the least, whereof one to be of the Quorum; or the said mayor or other head officer, with the assent of three other of his brethren, or men of best reputation within the said city, town corporate or market town, shall have power by authority hereof, in writing* (P.) *under their hands and seals, to pronounce and declare, that they have discharged the said apprentice of his apprenticehood, and the cause thereof; and the said writing so being made and enrolled by the clerk of the peace or town clerk, amongst the records that he keepeth, shall be a sufficient discharge for the said apprentice against his master, his executors and administrators; the indenture of the said apprenticehood, or any law or custom to the contrary notwithstanding. And if the default shall be found to be in the apprentice, then the said justices, or the said mayor or other head officer, with the assistance aforesaid, shall cause such due correction and punishment to be ministered unto him, as by their wisdom and discretion shall be thought meet.*"

On not agreeing.

To hear the matter at sessions before four justices at least; who may discharge the apprentice,

or may correct him.

If any such master.] It is now established (whatever doubts may formerly have been entertained) that this statute, which gives the power of discharging, extends *to all manner* of apprentices, and is not confined to the trades only which are mentioned. *Rex* v. *Collinbourn*, 2 *Lord Raym.* 1410. 1 *Str.* 663. *Et vide Mr. Serjeant Williams's note* (3) *to Hawkesworth* v. *Hillary*, 1 *Saund.* 313, 314.

Causes of discharge.

Shall misuse or evil intreat his apprentice.] An apprentice to a surgeon was sent by his master to the *East Indies:* It was adjudged that the master cannot compel his apprentice to go beyond the sea, except the master go with him; but he may send him to any part of *England*. *Coventry* v. *Windall*, *Brownl.* 67. 1 *Bolt.* 569. *S. C.*

But otherwise, if it be expressly agreed, or the nature of the apprenticeship doth import it; as if the master be a merchant adventurer, or sailor. *Hob.* 134. *S. C.*

Evil intreat.] Neglect on the part of the master to instruct his

apprentice in the mysteries of that trade, which he was bound to him to learn, is a sufficient cause of discharge. *Rex* v. *Amies*, 1 *Bott*, 574.

An apprentice was discharged, the master having *used him unkindly*, and refusing to provide for and entertain him: But by the court, this is not a good ground for the discharge; for there is a power to oblige the master to receive and entertain the apprentice; and *using him unkindly* is too loose. *Rex* v. *Easman*, 2 *Str*. 1014. 1 *Bott*. 575. *S. C.*

Sickness.

Or the apprentice do not his duty to his master.] An order reciting that *Joseph Higgen* was bound out by indenture, as the statute requires, to *John Parks*, and being lame and having the king's evil, and in the opinion of surgeons incurable, therefore the justices discharged the master from his apprentice. It was moved to confirm the order, because the master cannot now have the end of the binding, which was the service of his apprentice. But the order was quashed by the court; for the master takes the apprentice for better and worse, and is to provide for him in sickness and in health. *Rex* v. *Hales Owen*, 1 *Str*. 99. 1 *Bott*. 572. *S. C.*

Idiotcy.

However, where a boy was put apprentice, and after three years' service he plainly appeared to be an idiot, incapable of learning his trade, this defect was holden to be good cause of discharge. *Anon.* 1 *Bott*. 570.

Shall repair unto one Justice.] It was doubted *per Holt* C. J. *Anon.* 1 *Salk*. 67. whether the sessions had an original jurisdiction to discharge an apprentice without a previous application to a single justice, but this point is established in the following cases.

The sessions have an original jurisdiction.

Rex v. *Johnson*, 1 *Salk*. 68. Exception was taken to an order for discharging an apprentice, that the complaint was made originally at sessions, without any previous application to a single justice out of sessions: *Holt* C. J. delivered the opinion of the court, That the order was good; if it had been a new question, he should have held that the prior application to some justice out of sessions was necessary; but after so many orders affirmed in this court, which have been otherwise, it is too late to unsettle that now.

So also in the case of *R.* v. *Gill*, 1 *Str*. 143. it was said by the court — It hath been so often resolved that the sessions hath an original jurisdiction, that we will not suffer it now to be made a question, though it might be doubtful upon the statute itself.

And in *Rex* v. *Davie*, 2 *Str*. 704., the court agreed, that it is a point not now to be disputed, that the sessions hath an original jurisdiction to discharge apprentices. And *Lord Hardwicke* C. J. in the case of *Arglis* and *Heasman*, *Cas. temp. Hardw.* 101. held this determination to be right: for the application which the act directs to be made to a private justice seems to mean only to arbitrate and accommodate the dispute. The statute says, if he cannot *compound* the matter, he is to take bond for the parties' appearance at the sessions, so that they are not to take it by appeal.

This authority, however, must be exercised at a general sessions. 2 *Skin*.98. 1 *Bott*.570.

Or to the mayor or other head officer.] *Rex* v. *Collingburne*, 1 *Str*.663. An order of sessions was made at *Hicks's Hall* for the discharge of an apprentice to a freeman of the city of *London*, and who was bound and inrolled there. And the order being

removed into the K. B. the question was, Whether the court of sessions at *Hicks's Hall* hath any jurisdiction to discharge an apprentice to a freeman of *London* (especially as there is a saving in the act, of the custom of the city of *London*)? or whether he ought not to be discharged by the mayor's court only? It appeared that the apprentice lived with his master out of the city of *London*, and within the jurisdiction of the justices of *Middlesex*. To this exception it was answered that the statute doth not regard where the binding or inrolling is, but gives the jurisdiction expressly to the justices where the master lives; and if this did not belong to the justices of *Middlesex*, where the master lives, there would be a failure of justice: for neither the chamberlain, nor any other city magistrate, has power to compel the master's appearance before them. The Court affirmed the order of discharge, and said they would not take away the jurisdiction of the mayor's court, but only give a concurrent jurisdiction to the justices for the county. And it would be very inconvenient to have apprentices to a freeman of *London*, who are bound there, and who live in distant counties, obliged to come up to the mayor's court to get themselves discharged: And the words of the statute are very plain; for they give the jurisdiction to the justices *where the master dwelleth*.

A discharge of the apprenticeship by a justice must be by deed.

Who shall by his wisdom and discretion take such order and direction between the master and his apprentice as the equity of the case shall require.] Hereupon the justice, if he see cause, may, by consent of the master, discharge the apprentice from his apprenticeship: but this must not be by a verbal discharge; for the apprentice being bound by deed, cannot be discharged but by deed, that is, by order under the hand and seal of the justice. *Dalt.* c.58. p.141. 6 *Mod.*182. 2 *Ld. Raym.*1117.

If for want of good conformity in the master.] If the master be dissatisfied, he may have the matter transferred to the sessions: but the like option is not given to the apprentice.

On his appearance.] *W. Ditton's* case, 2 *Salk.* 490. It was moved to quash an order made for the discharge of an apprentice. The question arose upon the clause of the statute which directs that upon appearance of the master, the apprentice may be discharged by four justices, after one justice out of sessions hath endeavoured to compose the matter in difference. And in this case it was objected that *Ditton* the master was bound over to appear, and did not; and the justices have but a limited jurisdiction, and it is expressly directed by the act that the discharge is to be made on the appearance of the master; besides, there is another remedy, to proceed on the recognizance which is forfeited by not appearing. By the Court — The act must have a reasonable construction, so as not to permit the master to take advantage of his own obstinacy; and it would be very hard that, supposing the master is profligate, and runs away, the apprentice shall never be discharged.

An order of sessions for discharging an apprentice was quashed, because it did not set forth that the master was summoned, or that he appeared. *Rex* v. *Gill*, 1 *Str.* 143. *Rex* v. *Easman*, 2 *Str.* 1013. *S. P.*

Inrolled by the clerk of the peace.] The order of discharge

was not inrolled; and by the Court for that reason held ill. *Rex* v. *Hales Owen*, 1. *Str.* 99.

Shall be a sufficient discharge for the apprentice against his master.] But as the justices may discharge the apprentice from his master for ill usage; so also they may discharge the master from the apprentice, for evil and disorderly behaviour in the apprentice. *Hawkesworth* v. *Hillary*, 1 *Saund.* 313, 314.

Money may be ordered by justices to be returned.

Discharge.] *Rex* v. *Johnson*, 1 *Salk.* 68. Exception was taken to an order for discharging an apprentice that the justices had ordered money to be returned; but by the Court, the order is good. And *Holt* C. J. said he never doubted of that matter, for it is a power consequential upon their jurisdiction to discharge. The contrary was held in *Rex* v. *Vandeleer*, 1 *Stra.* 69.

Nevertheless, this doctrine of refunding seemeth now to be established, as founded on great reason, though not expressly mentioned in the act; for the justices being authorised to discharge *according to their discretions*, when the end of the apprenticeship cannot be attained with one person, it is but justice that the master should return part of the money he has received with his apprentice, to place him out with a new master. 4 *Bac. Abr.* tit. Master and Servant, *p.* 566, 567.

And in the case of *Rex* v. *Amies*, it was holden that an order for the master to return money is good, though it be not averred that he had any with the apprentice; for the order being to return money is a necessary proof of the receipt of it; and the justices in their orders are not obliged to set forth all the steps they take in their proceedings, there being nothing in the act which makes it necessary; and there is a known and established distinction between orders and convictions. *Rex* v. *Amies*, 4 *Bac. Abr.* 567. 2 *Barnard*, 244. 296. 1 *Bott.* 574. *Et vide* 1 *Saund.* 313. (a) n. (3).

Master of an apprentice becoming bankrupt.

Ex parte *Sandby*, 1 *Atk.* 149. In chancery, *Jan.* 22. 1745, The petitioner on the 10th of *Jan.* 1744, was put apprentice to *Ward*, a bookseller at *York*, and the sum of 80*l.* was given with him as an apprentice for seven years. In *July* following, a commission of bankrupt was taken out against *Ward*; and he being declared a bankrupt, assignees were chosen, who sold off the bankrupt's effects, and he is now the supervisor of the press to the purchaser, and becomes incapable of performing his part of the contract, nor is the petitioner able to raise any money to put him out an apprentice to another master, and the commission being a recent one, probably no dividend may be made in a year or a year and a half; so that all this time will be lost to the petitioner. Upon these circumstances the petitioner prayed that, on deducting 10*l.* out of the 80*l.* for his board with the bankrupt during the six months he lived with him, the assignees should be ordered to pay him the sum of 70*l.* out of the effects of the bankrupt already come to their hands, and not oblige him to prove it as a debt under the commission. The lord chancellor *Hardwicke* was at first doubtful, and seemed inclined to grant the petition, but on ordering search to be made for precedents, and several being produced wherein it was directed that apprentices should come in as creditors only, after deducting for the time they lived with the bankrupt, upon the remaining sum, it was ordered accordingly in this

case, and that the petitioner should be admitted a creditor for 70*l.* only.

Bill will not lie for a return of an apprentice fee.

Hale v. *Webb*, *T.* 26*G.*3. 2*Bro.*78. The plaintiff was bound apprentice to the defendant, with 200*l.* premium. About a year after, the mother wished to have him discharged; which being consented to, and it being necessary the same authority should discharge which bound him, they went before the chamberlain, where an end was put to the contract. The bill prayed a return of part of the premium; but Sir *Lloyd Kenyon*, *Master of the Rolls*, dismissed the bill. Suppose the discharge had been in consequence of gross misconduct, and the master had agreed to the dissolution, it would be a forfeiture of the premium.

Shall cause due correction and punishment to be administered.] This being left indefinite, it seemeth most apposite that the justices commit the apprentice to the house of correction for a time to be kept to hard labour, or otherwise corrected as the nature of the offence may require.

This clause, however, does not restrain, but enlarges the power of magistrates (over apprentices) beyond the power given them over the masters; and the magistrates may inflict corporal punishment, or discharge an apprentice at their discretion. *Hawkesworth* v. *Hillary*, 1 *Saund.*313, 314.

20 G.2. c.19. On complaint by the apprentice where no more than 5*l.* was paid, justices to summon master, &c.

Q. R. S.

By stat. 20*G.*2. *c.*19. § 3. It is enacted, "That it shall and may be lawful, to and for any two or more such justices (*a*), upon any complaint (Q) or application by any apprentice, put out by the parish, or any other apprentice, upon whose binding out no larger sum than 5*l.* (extended to 25*l.* by 4*G.*4. *c.*29. § 1.) of lawful *British* money was paid, touching or concerning any misusage, refusal of necessary provision, cruelty, or other ill treatment of or toward such apprentice, by his or her master or mistress, to summon (R) such master or mistress to appear before such justices at a reasonable time to be named in such summons; and such justices shall and may examine into the matter of such complaint; and upon proof thereof made, upon oath to their satisfaction (whether the master or mistress be present, or not, if service of the summons be also upon oath proved,) the said justices may discharge (S) such apprentice, by warrant or certificate under their hands and seals; for which warrant or certificate no fees shall be paid."

32 G.3. c.57. Order to be made after discharge, in cases of parish apprentices.

(T. U. W. X. Y. Z.)

And by stat. 32*G.*3. *c.*57. § 11. Where any parish apprentice shall be so discharged, such two justices *may* order (Q) such master or mistress, to deliver up to such apprentice his or her clothes and wearing apparel, and also to pay to the churchwardens or overseers of the parish or place, to which such apprentice shall belong, some or one of them, any sum not exceeding 10*l.* to be applied by them, some or one of them, under the order of such justices, for the again binding out such apprentice so discharged, or otherwise, for his or her benefit, as to such justices shall seem meet; and also to pay any sum not exceeding 5*l.*, in case such master or mistress shall refuse to deliver up such clothes and wearing apparel; and on his or her refusal to pay the sum so ordered, or either of them, or any part thereof, such justices may

(*a*) *i. e.* "Justices of the peace of the county, riding, city, liberty, town corporate, or place, where such master or mistress shall inhabit."

levy the same by distress, together with the reasonable expenses of such distress. And such justices may, if they think fit, compel such churchwardens and overseers, some or one of them, to enter into a recognizance for the effectual prosecution, by indictment (*a*), of such master or mistress, for such ill treatment of any such apprentice so discharged as aforesaid; and may also order that the costs and expenses of such prosecution shall be paid or reimbursed to such person entering into such recognizance as aforesaid, one moiety thereof out of the poor rates of the parish or place to which such apprentice shall belong, and the other moiety out of the county rate in which such parish or place shall lie. And in case the churchwardens and overseers shall refuse to pay such their moiety, such justices may levy the same by distress on the goods and chattels of such churchwardens and overseers, or any of them, together with the reasonable expenses of such distress.

32 G.3. c.57.

Costs of Prosecution.

Moiety to be paid by the county.

§ 12. Provides, "That it shall and may be lawful for such master or mistress, from whom any parish apprentice shall be discharged under and by virtue of the act, 20 *G*.2. to appeal against the order made for such discharge, and also against any such order made for his or her payment of any such sum or sums of money in consequence thereof, or for his or her payment of any sum or sums of money in lieu of a subsequent binding, under and by virtue of the provisions of this act, to the next general quarter sessions of the peace of the county, city, riding, division, or place where such orders, any or either of them shall be made, and upon such appeal, the said court of general quarter sessions shall finally determine the same, and in their discretion allow to all parties their reasonable costs; and no such distress for enforcing the payment of any such sum or sums of money as are last mentioned, shall be taken until after the general quarter session of the peace, to be holden next after any such order as aforesaid shall be made, in case the person who is ordered to pay the same, shall, within seven days after notice given to him or her of such order being made, give notice to such churchwardens and overseers of the poor, some or one of them, of such intended appeal; and in case such person shall fail to appear in support of his appeal at such general quarter session, then the sum of 40*s*. shall be added to the expenses of the distress before directed to be taken, and levied accordingly."

Appeal.

N.B. The warrant of distress is not to issue till after the next general or quarter sessions, if the person ordered to pay shall, within seven days after notice of the order, give notice to the churchwardens and overseers of such intended appeal.

If the party giving notice does not appear to support his appeal, 40*s*. to be added to expenses of distress.

And by 33 *G*.3. *c*.55. Two justices at any special or petty sessions, upon complaint upon oath, by or on the behalf of any parish apprentice, or other apprentice, upon whose binding out not more than 10*l*. was paid, (extended to 25*l*. by 4 *G*.4. *c*.29. § 1.) of any ill usage by his or her master, or mistress, (such master or mistress having been duly summoned to appear and answer such complaint,) may impose, upon conviction, any reasonable fine not exceeding 40*s*. upon such master or mistress, as a punishment for

33 G.3. c.55.
4 G.4. c.29.
Fine upon the master for ill-usage, where the premium did not exceed 25*l*.

(*a*) An indictment against a master for not providing proper and necessary food for his apprentice, whereby the apprentice became emaciated and almost starved to death, &c., must allege, that such apprentice was "of tender years, and under the control and dominion of the defendant." *Rex* v. *Friend and Wife*, *Exeter Sum. Ass.* 1801. reserved *per Le Blanc* J. *MSS. C. C. R. Rex* v. *Ridley*, *Shrewsbury Lent Ass.* 1801. *cor. Lawrence* J. 2 *Campb.* 650. Et vide *Beeley* v. *Wingfield*, *post.*

33 G.3. c.55.

such ill usage; and if not paid, may by their warrant levy the same by distress and sale of the goods of such offender, rendering to him the overplus (if any), after deducting such fine and the charges of such distress and sale; to be applied at the discretion of such justices either to the use of the poor, or paid and applied to and for the use and benefit of such apprentice, for or towards recompence or compensation for the injury he may have sustained by reason of such ill usage. And if any person shall be aggrieved by the imposition of such fine, or by any order or warrant of distress for levying the same, or by the judgment of the said justices, or by any act to be done in the execution of such warrant of distress, such person so aggrieved, may appeal to the next general or quarter sessions of the peace to be held for the county, &c. within which such person shall reside, of which appeal ten days' notice at least shall be given; and for want of such distress, such offender may be committed to the house of correction for any time not exceeding ten days.

Appeal.

§ 2. No person acting under any such warrant of distress shall be deemed a trespasser *ab initio* by reason of any irregularity in such warrant or proceedings thereupon.

20 G.2. c.19. Complaint by the master, where no more than 25*l.* was paid.

By stat. 20 *G.2. c.*19. § 4. *It shall and may be lawful to and for such justices, upon application or complaint made* (A a) *upon oath, by any master or mistress, against any such apprentice,* [viz. against any apprentice put out by the parish, or any other apprentice upon whose binding out no larger sum than 5*l.* (extended to 25*l.* by stat. 4 *G.*4. *c.*29. § 1.) was paid, see § 3. *ante*, p. 172.] *touching or concerning any misdemeanor, miscarriage, or ill behaviour, in his or her service, to hear, examine, and determine* (B b) *the same, and to punish the offender by commitment* (C c) *to the house of correction, there to remain and be corrected, and held to hard labour for a reasonable time, not exceeding one calendar month, or otherwise by discharging* (D d) *such apprentice in manner and form before-mentioned.*"

A a. B b. C c. D d.

4 G.4. c.29. Justices may order premium to be refunded.

Stat. 4 *G.*4. *c.*29. (*a*) § 2. enacts, that from 1st *August* 1823, it shall be lawful for any two or more of H. M.'s justices of peace, in any case where they shall direct any apprentice or apprentices to be discharged under and by virtue of stats. 20 *G.*2. *c.*19., or 33 *G.*3. *c.*55., or of this act, to take into consideration the circumstances under which such apprentice or apprentices shall be so discharged, and to make an order upon the master or mistress of such apprentice or apprentices to refund all or any part of the premium or premiums which may have been or shall be paid upon the binding or placing out of such apprentice or apprentices, as such justices in their discretion shall see fit; and in case any sum or sums so ordered to be refunded by such master or mistress, shall be neglected to be paid to the person or persons directed in any such order to receive the same, it shall be lawful for such two or more justices, in petty sessions, by warrant under their hands and seals, to levy the same upon the goods and chattels of such master or mistress, with the costs and charges of levying such distress, rendering the overplus of the sale of such goods and chattels, upon demand, to such master or mistress; and in case there shall not

Distress.

(*a*) Intituled, " An act to increase the power of magistrates in case of apprenticeships."

be sufficient goods and chattels whereon to levy the same, then it shall and may be lawful for such justices to commit such offender or offenders to the house of correction, for any time not exceeding two months, unless the sum or sums ordered to be refunded, with all costs, shall be sooner paid and satisfied, and see 5 *G.*4. *c.*18. *post*, tit. Distress.

4G.4. c.29.

Recited acts to continue in force, except as herein altered.

§ 3. Enacts, that the said recited acts and all and every the powers and provisions thereof (except such parts thereof as are varied, altered, or repealed), shall be as valid, and effectual for carrying this act into execution, as if repeated in this act.

32 G.3. c.57. Apprentices discharged for ill behaviour under 20 G.2. c.19. may be committed to the house of correction.

And by stat. 32 *G.*3. *c.*57. § 13. reciting, that whereas by 20 *G.*2. *c.*19. it is enacted, " That it shall and may be lawful to and for two justices, upon application or complaint made upon oath by any master or mistress against any parish apprentice, touching or concerning any misdemeanor, miscarriage, or ill-behaviour of such apprentice, to hear and determine the same, and punish the offender in such manner as is therein mentioned, or otherwise to discharge such apprentice from his apprenticeship, and it is expedient to prevent the expectation of such discharge being an inducement to such ill-behaviour on the part of the apprentice;" it is enacted, " That in all cases where any parish apprentice shall be discharged by two justices, under and by virtue of the said last mentioned act, from his or her apprenticeship, on account of any misdemeanor, miscarriage, or ill-behaviour on the part of such apprentice, that it shall and may be lawful for such two justices, if they think proper, by warrant under their hands and seals, to punish such offender by commitment to the house of correction, there to remain and be corrected, and kept to hard labour for a reasonable time, not exceeding three calendar months, as to such justices shall seem meet."

The complaint must be made by the master, but it may be verified upon the oath of any other person, who knows the fact complained of.

Finley v. *Jowle*, *E.* 50 *G.*3., 12 *East.* 248. The plaintiff was an apprentice within the description of the stat. 20 *G.*2. *c.*19., against whom his master, the defendant, had preferred a complaint in writing before two magistrates of the county of *York;* which complaint was verified *by the oath of a witness who spoke to the fact*, but *not* by the oath of the *master himself:* and the magistrates having discharged the defendant of his apprentice, the latter brought an action upon the indentures against his master, who justified under the magistrates' discharge: and at the trial, it was objected that the magistrates had no jurisdiction by the words of the act, the complaint not having been verified upon the oath of the master. But this was over-ruled, and there was a verdict for the defendant.—Upon a motion for a new trial, Ld. *Ellenborough* C.J. said, The words of the act must be understood with reference to the subject-matter. The application or complaint must be made to the magistrates *by the master or mistress*, because they alone have an interest in preferring it: and it must be verified *upon oath*, but it need not be upon the oath of the master or mistress, who may know nothing of the fact themselves: the complaint may be well founded upon some cause which happened in their absence. But it is sufficient that the master makes the complaint and verifies it by the oath of the person who knows the fact; otherwise unless the fault were committed in the presence of the master, he would be without the remedy intended to be given by the legislature. *Per Curiam*, Rule refused.

20 G.2. c.19.
Appeal

By stat. 20 *G.2. c.*19. § 5. Persons aggrieved by any determination, order, or warrant of such justices (except any order of commitment) may appeal to the next sessions for the county, &c. town corporate or place where such order shall be made, who may award costs to either party not exceeding 40*s.* to be levied by distress and sale.

§ 6. And no *certiorari* shall issue to remove any of the said proceedings.

32 G.3. c.57.
Appeal.

By stat. 32 *G.*3. *c.*57. § 14. Persons aggrieved by any thing done or omitted by any churchwarden or overseer, or justice, or any other person by virtue of this act, (besides such matters or things for which an appeal is herein before specially given,) may appeal to the next sessions, where the same shall be heard and finally determined; and such court may award reasonable costs and expenses to either party.

5 Eliz. c.4.
Apprentice fleeing into another shire.

By stat. 5 *Eliz. c.*4. § 47. If any apprentice in husbandry, or in any art or occupation aforesaid, shall flee into any other shire, the justices, mayors, or other head officers, being justices, may issue writs of *capias* to the sheriffs of the counties or other head officers of the places whither he shall so flee, to take his body, returnable before them at what time shall please them; so that if he come by such process he may be put in prison, till he find sufficient surety well and honestly to serve his master.

24 G.2. c.55.

And by stat. 24 *G.2. c.55.* § 1. If a justice of any county, riding, &c. or place, shall issue a warrant against any person, and he shall escape into another county, riding, &c. any justice of such other county, riding, &c. shall upon proof on oath of the hand-writing of such justice, granting the warrant, indorse his name thereon; and the constable or other person, on having the warrant so indorsed, may arrest him there, and carry him before a justice in such other county, &c., if the offence be bailable, to find bail, or else shall carry him back before a justice in the shire from whence the warrant did first issue.

6 G.3. c.25.
Apprentice to serve beyond his term, for the time that he absented.

By stat. 6 *G.*3. *c.*25. § 1. " If any apprentice shall absent himself from his master's service before the term of his apprenticeship shall be expired, every such apprentice shall, at any time or times thereafter, whenever he shall be found" (so it be within seven years after the expiration of his term, § 3), " be compelled to serve his said master for so long a time as he shall have so absented himself from such service, unless he shall make satisfaction to his master for the loss he shall have sustained by his absence from his service, and so from time to time, as often as any such apprentice shall, without leave of his master, absent himself from his service before the term of his contract shall be fulfilled: And in case any such apprentice shall refuse to serve as hereby required, or to make such satisfaction to his master, such master may complain upon oath to any justice of the peace of the county or place where he shall reside, which oath such justice is hereby empowered to administer, and to issue a warrant under his hand and seal for apprehending any such apprentice; and such justice, upon hearing the complaint, may determine what satisfaction shall be made to such master by such apprentice. And in case such apprentice shall not give security to make satisfaction according to such determination, it shall and may be lawful for such

justice to commit every such apprentice to the house of correction for any time not exceeding three months." 6 G.3. c.25.

By § 5. Persons aggrieved by such determination, order, or warrant of the justice (except an order of commitment) may appeal to the next sessions, giving six days' notice to the justice and to the parties, of his intention of bringing such appeal, and of the cause and manner thereof, and entering into recognizance, within three days after such notice, before a justice, with sufficient surety, to try the appeal at and to abide the order or judgment of and pay such costs as shall be awarded by the justices at such sessions; which said justices, at their said sessions, on proof of such notice given, and of entering into such recognizance, shall hear and determine the appeal, and give such relief and costs to either party, as they shall adjudge reasonable. And their judgments and orders shall be final and conclusive to all parties concerned. Appeal.

§ 6. Provided, that nothing herein shall extend to the stannaries in *Devon* or *Cornwall*; or to impeach or lessen the jurisdiction of the chamberlain of *London*, or of any other court within the said city, touching apprentices; § 2. nor to any apprentice, whose master shall have received with him the sum of 10*l*. Exceptions.

The remedy given by § 1. of this latter statute of the 6 *G*.3. *c*.25. which empowers the justices to oblige apprentices absenting themselves before the expiration of their apprenticeships, to serve for such time as they shall be absent, or to make satisfaction for their absence, or in default of giving security for such satisfaction, to commit them, is cumulative, and does not repeal the penal provision of stat. 20 *G*.2. *c*.19. § 4. as applied to the misdemeanor. *Gray* v. *Cookson and Clayton*, 16 *East*, 13. *ante*, p. 124. The remedy given by 6 G.3. c.25. § 1. is cumulative to the punishment by 20 G.2. c.19. § 4.

By stat. 4 *G*.4. *c*.34. intituled "An Act to enlarge the powers of justices in determining complaints between masters and servants, and between masters, apprentices, artificers, and others," § 1. after reciting the titles of stats. 20 *G*.2. *c*.19. 6 *G*.3. *c*.25. 4 *G*.4. *c*.29. and that it is expedient to extend the powers of the said acts; Enacts, that it shall be lawful, not only for any master or mistress, but also for his or her steward, manager, or agent, to make complaint upon oath against any apprentice, within the meaning of the said acts, to any justice of peace of the county or place where such apprentice shall be employed, of or for any misdemeanor, misconduct, or ill behaviour of any such apprentice; or if such apprentice shall have absconded, it shall be lawful for any justice of peace of the county or place where such apprentice shall be found, or shall have been employed, and on complaint thereof made on oath by such master, mistress, steward, manager, or agent, which oath the said justice is hereby empowered to administer, to issue his warrant for apprehending every such apprentice; and further, to hear and determine the same complaint, and to punish the offender by abating the whole or any part of his or her wages, or otherwise by commitment to the house of correction, there to remain and be held to hard labour, for a reasonable time not exceeding three months. 4 G.4. c.34. Masters or their steward or agent may make complaint against apprentices. Justice may abate wages, or commit to house of correction.

By § 2. All complaints, differences, and disputes which shall arise between masters or mistresses and their apprentices, within the meaning of the said acts, or any of them, concerning any wages which may be due to such apprentices, may be heard and deter- Justices may order payment of wages to apprentices, provided the sum

4 G.4. c.34.

in question does not exceed 10*l.*

mined by one or more justice or justices of the peace of the county or place where such apprentice or apprentices shall be employed, which said justice or justices is and are empowered to examine on oath any such master or mistress, apprentice or apprentices, or any witness or witnesses, touching any such complaint, difference, or dispute, and to summon such master or mistress to appear before him or them at a reasonable time to be named in such summons, and to make such order for payment of so much wages to such apprentice or apprentices, as according to the terms of the indentures shall appear to such justice or justices, under all the circumstances of the case, to be justly due, (provided that the sum in question do not exceed 10*l.*), the amount of such wages to be paid within such period as the said justice or justices shall think proper, and shall order the same to be paid; and in case of refusal or nonpayment thereof, such justice and justices shall and may issue forth his and their warrant, to levy the same by distress and sale of the goods and chattels of such master or mistress, rendering the overplus to the owners, after payment of the charges of such distress and sale.

How servants in husbandry, artificers, &c. shall recover their wages, in cases of absence of masters, &c.

By § 4. Whereas it frequently happens that masters, mistresses, or employers reside at considerable distances from the parishes or places where their business is carried on, or are occasionally absent for long periods of time, either beyond the seas, or at considerable distances from such parishes or places, and during such residence or occasional absences entrust their business to the management and superintendence of stewards, agents, bailiffs, foremen, or managers, whereby servants in husbandry, artificers, handicraftsmen, miners, colliers, keelmen, pitmen, glassmen, potters, labourers, or other persons and apprentices, are or may be subjected to great difficulties and hardships, and put to great expense in recovering their wages; it is therefore enacted, that in either of the said cases, it shall be lawful for any justice or justices of the county or place where such servant in husbandry, &c. or apprentice shall be employed, upon the complaint of any such servant, &c. concerning the nonpayment of his or her wages, to summon such steward, &c. to be and appear before him or them at a reasonable time to be named in such summons, and to hear and determine the matter of the complaint in such and the like manner as complaints of the like nature against any master, mistress, or employer are directed to be heard and determined in and by this and the before recited acts, and also to make an order for the payment by such steward, &c. to such servant, &c. of so much wages as to such justice or justices shall appear to be justly due; provided that the sum in question do not exceed the sum of 10*l.*; and in case of refusal or nonpayment of any sum so ordered to be paid by such steward, agent, foreman, bailiff, or manager, for the space of 21 days from the date of such order, such justice or justices as aforesaid shall and may issue forth his or their warrant to levy the same by distress and sale of the goods and chattels of such master, mistress, or employer, rendering the overplus to the owner or owners, or to such steward, &c. for the use of such master, mistress, or employer, after payment of the charges of such distress and sale. And see stat. 5 *G.*4. *c.*19. *post*, Distress.

Justices may order payment

§ 5. Enacts, that every justice or justices before whom any complaint shall be made, in pursuance of the said stats. 20 *G.*2.

*c.*19. or 31 *G.*2. *c.*11. shall and may order the amount of the wages that shall appear due to any servant in husbandry, artificers, labourers, or other person named in the said acts, or either of them, to be paid to the person entitled thereto, within such period as the said justice or justices shall think proper; and in case of refusal or nonpayment thereof, shall and may levy the same by distress and sale, in manner directed by the said first mentioned act; and every order or determination of such justice or justices made under this act shall be final and conclusive, any thing in either of the said acts to the contrary notwithstanding.

4 G.4. c.34. — of wages within such time as they may think fit.

By § 6. nothing in this act shall impeach or lessen the jurisdiction of the chamberlain of the city of *London,* or of any other court within the said city, touching apprentices.

Saving for jurisdictions in London.

XI. Master dying.

It hath been said that if the master die, the apprentice goes to the executor or administrator to be maintained, if there be assets; but the executor or administrator may bind him to another master for the remaining part of his time.

But in *Rex* v. *Peck,* 1 *Salk.* 68. *Eyre* J. held that an apprenticeship is a personal trust between the master and servant, and determines by the death of either of them; and by the death of either of them the end and design of the apprenticeship cannot be obtained, and it may be the executor is of another trade. He admitted that covenant would lie against the executor; but in that there is no inconvenience, because the executor may make his defence by pleading no assets, or debts of a higher nature. *Holt* C. J. said that by the custom of *London,* the executor shall put the apprentice to another master of the same trade; and that in other places it would be very hard to construe the death of a master to be a discharge of the covenants; he said, it had been held that the covenant for instruction failed, but that he still continues an apprentice with the executor as to maintenance.

For the interest of a master in his apprentice is a mere personal trust; and the indentures not being assignable in his lifetime, except by custom, and with the consent of the apprentice, the master's executors cannot claim his services, neither can they maintain debt on a bond for performance of the covenant of the indenture, unless his executors be named. *Baxter* v. *Burfield,* 1 *Bott.* 581. 2 *Str.* 1266.

Note; the words in *Cro. Eliz.* 553. are these: Covenant lies against an executor in every case, although he be not named; unless it be on such a covenant as is to be performed by the person of the testator, which they cannot perform. *Hyde* v. *the Dean of Windsor, Cro. Eliz.* 553.

Soam v. *Bowden and Eyles, M.* 30 *G.*2. *Canc. Finch. Rep.* 396. The master received with the apprentice 250*l.* and died within two years, the apprentice having for that time been employed only in inferior affairs. It was decreed, after debts on specialties paid, that the executors repay the 250*l.* as a debt due on simple contract, deducting after the rate of 20*l.* a year, for the maintenance of the apprentice during the time he lived with his master.

By stat. 32 *G.*3. *c.*57. § 1. After reciting, that in the event of the death of the master of any parish apprentice during the term

32 G 3. c.57.

32 G.3. c.57.

Where a parish apprentice fee is not more than 5*l.* he shall not be obliged to serve executors more than three months after the master's death.

of apprenticeship, the agreement for service on the part of the apprentice is at an end, but the covenant for maintenance on the part of the master still continues in force, as far as his assets will extend, or doubts have arisen with respect thereto; it is enacted, that in case of the death of the master or mistress of any parish apprentice during the term of such apprenticeship, upon which binding no larger sum than 5*l.* shall be paid, any covenant for the maintenance of such apprentice inserted in the indenture shall not be in force longer than three calendar months next after the death of such master or mistress; and that during such three months such apprentice shall continue to live with and serve as an apprentice the executors and administrators of such master or mistress, or such person as they or some or one of them shall appoint; and such master or mistress and apprentice, during such three months, shall be subject to all the laws in force for regulating masters and parish apprentices.

And shall serve for the remainder of the term, on application to two justices within the said three months by the widow, &c.

E e.
F f.

§ 2, 3. And whereas it is reasonable that such apprentice as aforesaid, in case of his master's death, should be obliged to make some satisfaction by his labour to the family or representatives of his deceased master, for the advantages he has received in his childhood, when his service could not be equal to the expenses of his maintenance, it is enacted, that within such three calendar months after the death of such master or mistress, two justices, on the application of the widow of such master, or by the husband of the mistress, or by any son or daughter, brother or sister, or executor or administrator of such person deceased, by indorsement (E e) on such indenture or counterpart thereof, or by any other instrument or writing (F f), may order and direct that such apprentice shall serve as an apprentice, any one of such persons so making application as aforesaid (such person having lived with, and having been part of the family of, such master or mistress at the time of his or her death) as they shall think fit, during the residue of the term mentioned in such indenture; and the person obtaining such order shall declare his acceptance of such apprentice, by subscribing his or her name to such order; and after such order shall be made, the executors and administrators, and the personal assets, estate, and effects of the master or mistress so dying, shall be discharged from any covenant in such indenture; and the person obtaining the same shall be deemed the master or mistress of such apprentice in like manner as if he had been originally bound to such master or mistress; and such last-mentioned master or mistress, or his or her executors and administrators, shall be bound by the covenants contained in such indenture in like manner as if he had executed the counterpart thereof; and such master or mistress and apprentice shall be subject to the several penalties, provisions, and regulations which shall then be in force for governing apprentices; and all justices shall have the like power and authority with respect thereto, as they shall then have by any act of parliament relating to parish apprentices, and so on the death of the subsequent master.

Application, when made.

§ 4. But if no such application shall be made as aforesaid within such three calendar months; or in case such two justices shall not think fit that such apprenticeship should be continued, then such apprenticeship shall be determined; and the indenture and cove-

nants therein shall be at an end, in like manner as they would have been at the expiration of the term.

32 G.3. c.57.

§ 5. Provided that nothing herein shall extend to any parish apprentice, but to such only as shall be living with and shall make part of the family, or be in the actual employment of such original master or mistress, or of any subsequent master or mistress, appointed by virtue of this act, at the time of his or her death.

To what apprentices act applies.

§ 6. And whereas delays must happen in bringing an action upon such covenant for maintenance as aforesaid, it is enacted, that in case any such original master or mistress, or master or mistress appointed by virtue of this act as aforesaid, shall, during the term of any such parish apprenticeship as aforesaid, or the executors or administrators of such master or mistress, or any of them, having assets, shall, during such three calendar months, refuse or neglect to maintain and provide for any such apprentice according to the terms of such covenant; two justices, on complaint of such apprentice, or of the churchwardens and overseers of such parish or place, may levy by distress of the personal estate and effects or assets of such master such sum as shall be necessary for the maintenance and clothing of such apprentice, and as shall also be necessary to reimburse to the churchwardens and overseers any sum that shall have been reasonably expended by them for that purpose.

Power of two justices.

XII. Apprentice stealing his Master's Goods.

By stat. 21 *H.*8. *c.*7. Servants going away with their master's goods, with intent to steal them, shall be guilty of felony; but not to extend to apprentices. See 2 *East's P. C.*562.

21 H.8. c.7.

And Lord *Hale* says, that if a man had delivered goods to his servant to keep or carry for him, and he carrieth them away *animo furandi*, this was not felony, but by the above statute it is made felony, if of the value of 40*s.* but the offender shall have his clergy. But yet if an apprentice do this, this is neither felony at common law, nor by statute. 1 *Hale's P. C.*505. 2 *East's P. C.* 562.

And by stat. 12 *Ann. st.*1. *c.*7. Persons stealing to the value of 40*s.* being in a dwelling-house or out-house thereto belonging, though such house be not broken, and though no person be therein, are excluded from the benefit of clergy: but this is not to extend to apprentices under fifteen years of age, who shall rob their masters. But if they be fifteen years of age, they shall be excluded from clergy as other persons. See 2 *East's P. C.*629.

12 Ann. st.1. c.7.

XIII. Inticing away an Apprentice.

The inticing of an apprentice to depart from his master is not an offence of a public nature, for which an indictment will lie; but the party's remedy is by an action on the case which he may well maintain. *Reg.* v. *Daniel*, 6 *Mod.*182. *Reevely* v. *Mainwaring*, 3 *Burr.*1306.

But in order to maintain such action, the apprentice must have been bound by deed indented. *Smith* v. *Birch*, 1 *Sess. Ca.*222. *Hill* v. *Allen*, *Canc.* 1 *Ves.*83. *H.* 1747. The bill was by an apprentice, who, against his master's consent, quitted his service

Apprentice leaving his mas-

ter's service, the master is entitled to his earnings.

of a shipwright before his time was out, and went on board a privateer, which took a very considerable prize, whose share thereof, being 1200*l.* the master claimed. By L. *Hardwicke*— In general, the master is entitled to all that the apprentice shall earn; consequently, if he run away, and go to a different business, the master will be entitled at law to all his earnings. And in this case, his lordship said, there was nothing in equity to relieve. But he said he would send the case to be tried at law, unless they would agree to compound the matter, which he recommended to them, and thought, as the boy's share of the prize was so very large, the balance ought to be in his favour. The master agreed to accept 450*l.*

So, where an apprentice of a waterman's widow was taken from her, and put on board a queen's ship, where he earned two tickets, which came to the defendant's hands, and for which the mistress brought trover and had judgment (for what the apprentice gains he gains for his master), and in this case it being questioned whether it was a legal apprenticeship, and contended that if the party were not legally apprentice the plaintiff had no title, *Holt* C. J. said he would understand him an apprentice or servant *de facto*, and that would suffice against them, being wrong-doers. *Barber* v. *Dennis*, 6 *Mod.*69. 1 *Salk.*68. *Rex* v. *Wantage*, 1 *East*,601.

Lightly v. *Clouston*, *H.*48 *G.*3. *C. P.* 1 *Taunt.*112. The plaintiff's apprentice had been seduced from his service to work with defendant; and plaintiff brought an action for work and labour. It was contended that the action ought to have been brought *upon the case*. And against a rule obtained to set aside the verdict for the plaintiff, and entering a nonsuit, cause was shewn, and *Barber* v. *Dennis* was cited. And it was held by Sir *James Mansfield* C. J. that the master might wave his action for the seduction of his servant, and bring an action for an equivalent for his labour in the defendant's service.

XIV. Setting up Trades, &c.

By the common law no man may be prohibited to work in any lawful trade, or to use more trades than one, at his pleasure. *Ipswich Taylors' case*, 11 *Rep.*53. *b.*

5 Eliz. c.4.

By stat. 5 *Eliz. c.*4. § 31. Every person was restrained from setting up, occupying, using, or exercising any craft, mystery, or occupation, then used or occupied within *England* or *Wales*, except he should have been brought up therein seven years at least as an apprentice, on pain of 40*s.* a month.

54 G.3. c.96. 5 Eliz. c.4. Reciting that persons should not exercise any art except they had served an apprenticeship of seven years, &c.

But by stat. 54 *G.*3. *c.*96. (*a*) intituled "An act to amend an act passed in the fifth year of queen *Elizabeth*, intituled 'An act containing divers orders for artificers, labourers, servants of husbandry, and apprentices,'" reciting that "whereas by an act passed in the fifth year of the reign of her late majesty queen *Elizabeth*, intituled 'An act containing divers orders for artificers, labourers, servants of husbandry, and apprentices,' it was enacted, that from and after the first day of *May* then next coming, it should

(*a*) Passed 18th *July*, 1814. See *Hansard*'s Parliamentary Debates, vol. xxvii. p. 563. 879.

not be lawful to any person or persons, other than such as did then lawfully use or exercise any art, mystery, or manual occupation, to set up, occupy, use or exercise any craft, mystery, or occupation, then used or occupied within the realm of *England* or *Wales*, except he shall have been brought up therein *seven* years at least as an apprentice; nor to set any person on work in such mystery, art, or occupation, being not a workman at that day, except he shall have been apprentice as aforesaid, or else having served as an apprentice as aforesaid, shall become a journeyman, or hired by the year, upon pain that every person willingly offending, or doing the contrary, shall forfeit and lose for every default 40*s.* for every month: and whereas it is expedient that so much of the said act should be repealed;" it is " enacted, that so much of the said recited act shall be, and the same is hereby repealed, and declared to be null and void to all intents and purposes whatsoever."

54 G.3. c.96.

So much of the recited act shall be repealed.

§ 4. " Provided always, and be it further enacted, that this act, or any thing herein contained, shall not extend, or be construed to extend, to defeat, alter, or prejudice the custom and order of the city of *London* concerning apprentices, or the ancient custom, usages, privileges, or franchises of the said city, or of any other city, town, corporation, or company lawfully constituted, or the citizens and freemen thereof; or any bye-law or regulation of any corporation or company lawfully constituted."

Customs of London in respect to apprentices, not to be affected.

And by stat. 56 *G.3. c.*67. intituled " An act to enable such officers, mariners, and soldiers, as have been in the land or sea service, or in the marines, or in the militia, or any corps of fencible men, since the forty-second year of his present majesty's reign, to exercise trades," after reciting, that " whereas there have been and are divers officers, mariners, soldiers, and marines, who have served H. M. in the late wars by sea and land, some of whom are men that used trades, others that were apprentices to trades, who have not served out their times, and others who, by their own industry, have made themselves apt and fit for trades; many of whom, the wars being now ended, would willingly employ themselves in those trades which they were formerly accustomed to, or which they are apt or able to follow and make use of for getting their living by their own labour, but are or may be hindered from exercising those trades in certain cities and corporations, and other places within this kingdom, because of certain bye-laws and customs of those places;" it is enacted, " That all such officers, mariners, soldiers, and marines, as have been at any time employed in the service of H. M. since the 22d *June* 1802, and have not since deserted the said service, and also the wives and children of such officers, &c. may set up and exercise such trades as they are apt and able for in any city, town, or place within this kingdom, without any let, suit, or molestation of any person or persons whatsoever, for or by reason of the using of such trade, nor shall such officers, &c. or their wives or children, during the time they shall exercise such trades, be removable from such respective place or places, to his, her, or their last legal place of settlement by virtue of any law now in being relative to the settlement of the poor, until such person or persons shall become actually chargeable to such parish or place; and if any such officer, &c. or the wife or any child of any such officer, &c. shall be impleaded, or

56 G.3. c.67. Enabling soldiers, mariners, &c. to exercise trades.

Officers, mariners, soldiers, and marines, who have been employed in H. M.'s service since June 22. 1802, and have not since deserted, and also the wives and children of such, may set up and exercise trades in any part of this kingdom, and shall not be liable to re-

56 G.3. c.67.

moval from thence to their last legal settlement, till they become actually chargeable to the parish;

and if sued, on pleading the general issue, they shall be acquitted, and be paid double costs of suit.

indicted in any court soever within this kingdom for using or exercising any such trades as aforesaid, then the said officer, &c. or the wife or child of any such officer, &c. making it appear to the same court where they are so sued, impleaded, or indicted, that they have served H. M. as aforesaid, or that he, she, or they is or are the wife or wives, child or children of such officer, &c. who shall have so served H. M., shall, upon the general issue pleaded, be found not guilty in any plaint, bill, information, or indictment exhibited against them; and such person or persons who, notwithstanding this act, shall prosecute the said suit by bill, plaint, information, or indictment, and shall have a verdict passed against him or them, or become nonsuit therein, or discontinue his or their said suit, shall pay unto such officer, &c. or the wife or child of such officer, &c. respectively, double costs of suit, to be recovered as any other costs at common law may be recovered; and all judges and jurors before whom any such suit, information, or indictment shall be brought, and all other persons whatsoever, are to take notice of this present act, and shall conform themselves thereto;" any statute, &c. to the contrary in anywise notwithstanding.

When any two justices shall summon such persons to give evidence as to the place of settlement, they shall make oath accordingly; an attested copy whereof shall be given them.

By § 2. It is further enacted, "That it shall be lawful for any two or more justices of peace for the county, city, town, or place where any such officer, &c. shall set up and exercise any trade as aforesaid, to cause such mariner, soldier, or marine, to be summoned before them in the city, town, or place where such officer, &c. shall set up and exercise such trade as aforesaid, in order to make oath of the place of his last legal settlement, which oath the said justices are hereby empowered to administer, and such officer, &c. is hereby directed to obey such summons, and to make oath accordingly; and such justices are hereby required to give an attested copy of such affidavit so made before them to the person making the same, in order that he may produce it when required; which attested copy shall at any time be admitted as evidence as to such last legal settlement before any of H. M.'s justices at any general or quarter sessions of the peace: Provided always, that in case any such officer, &c. shall be again summoned to make oath as aforesaid, then on such attested copy of the oath by him formerly taken being produced by him, or by any other person on his behalf, such officer, &c. shall not be obliged to take any other or further oath with regard to his legal settlement, but shall leave a copy of such attested copy of his examination, if required."

This act extends to militia men and fencibles who have served five years.

§ 3. Enacts, "That this act, and every part thereof, shall extend to all officers and soldiers who have personally served in the militia, or any of the fencible regiments, from the said 22d *June* 1802, for the term of five years, and have been honourably discharged."

Privileges of the two universities reserved.

§ 4. Provided always, "That this act shall not be in anywise prejudicial to the privileges of the universities of *Cambridge* and *Oxford*, or either of them, or extend to give liberty to any person to set up the trade of a vintner, or to sell any wine or other liquors within the said Universities, without licence first had and obtained from the vice-chancellor of the same respectively."

An apprentice, bound for seven years to A., served him in his house be-

Rex v. *Inman*, *M.* 1 *G.*4. 4 *B.* & *A.*55. *Quo warranto* against the defendant, for exercising the franchise of a free burgess of the borough of *Colchester*, in the county of *Essex*. The custom stated in the defendant's plea was, that every person who has

served an apprenticeship by indenture, to a free burgess of the said borough, for the term of seven years, according to the custom of the said borough, in any art, trade, mystery, or manual occupation, hath used, and of right hath been, and of right ought to be admitted and sworn into the office of a free burgess of the said borough; and the plea further stated, that the defendant had served an apprenticeship for seven years, according to this custom, to one *George Johnstone*, in the art, trade, and mystery of a cordwainer. At the trial, before *Wood* B., it appeared, that the defendant had been bound apprentice for seven years to *Johnstone*, a freeman of *Colchester*. He served him between five and six years, under the indenture, during which time he lived in his master's house. At the expiration of this time, his master's business having diminished, he quitted his house, and went away to reside in that of his mother; during which time, his master permitted him to work for any other persons whom he might choose, he having agreed to pay to his master two shillings a week. His master occasionally gave him work to do, for which he was not paid, and, during all this time, the indenture remained in the master's possession. The jury having found a verdict for the crown, on motion for R. N. to set it aside, *Abbott* C. J. said, It is quite clear, that in order to entitle this party to his freedom, there must be not only a continuance of the *binding*, but also a continuance of the *service under the indentures*, to a free burgess, during the whole period of seven years. I am of opinion, that the service under the indentures, to the first master, did not continue so long; and the consequence is, that the party is not entitled to his freedom. The verdict, therefore, was right. R. R.

tween five and six years, and afterwards, for the remainder of the term, resided in his mother's house, having agreed with his master, that he should be at liberty to work for whom he pleased, he paying 2*s*. per week to his master. The master also, during this time, occasionally gave him work, for which he was not paid. Held, that this was not a continuance of the service to A. for seven years under the indenture.

For the punishment of an apprentice robbing his master, see stat. 3 *G*. 4. *c*. 38. § 2. *post*, Vol. III. tit. Larceny, Vol. V. tit. Servants, § XII.

Apprentice robbing his master.

A. Form of an Order from Two Justices empowering Overseers of the Poor to bind a poor Child Apprentice, pursuant to stat. 56 G. 3. *c*. 139. § 1. *ante*, p. 138.

A.

County of ——— to wit. } *WHEREAS* A. B. *and* C. D. *overseers of the poor of the parish of* ———, *in the county of* ———, *have on this* ——— *day of* ——— *in the* ——— *year of the reign of our sovereign lord* George *the* ———, *at the parish of* ———, *in the said county, brought before us* J. C. *and* S. P. *Esquires, two of the justices assigned to keep the peace in and for the said county of* ———, *and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed,* T. F. *a poor male or female child* [as the case may be], *of the age of* ——— [exceeding nine years] *and upwards, belonging to and having a settlement in the said parish of* ———, *in the said county, whose parents* E. F. *and* C. F. *are not able to maintain such child: and the said* A. B. *and* C. D. *as such overseers of the poor of the parish of* ——— *aforesaid, have proposed to us, the said justices, to bind such child to be an apprentice to one* G. H. *of the parish of* ———, *in the county of* ———, *farmer, and residing within the distance of forty miles from the parish and place to which the said child belongs, and, as an apprentice, with him the said* G. H. *to dwell and serve until the said* T. F. *shall come to the age of* ——— *years,* [or if a female, add, *or until the time of her marriage,*

which shall first happen,] according to the statutes in such case made and provided. And whereas we the said justices, having now here enquired into the propriety of binding such child apprentice to the said G. H. *being the person to whom it hath been so proposed by such overseers to bind such child as aforesaid: and whereas we, the said justices, have now here particularly enquired and considered whether such person doth reside and have his place of business within a reasonable distance from the place to which such child doth so belong, as aforesaid, having regard to the means of communication between such places, and whether any circumstances make it fit in the judgment of us, the said justices, that such child should be placed apprentice at a greater distance. [And whereas also we have now here examined the said* E. F. *and* C. F. *the father and mother of the said child, and who reside in the said parish and place to which the said child doth belong* (if this was not done, these words should be omitted).] *And we have now here particularly enquired of the said* E. F. *and* C. F. [or A. B. *and* C. D.) *and otherwise, as to the distance of the residence and place of business of the said* G. H. *and the means of communication therewith: and whereas also we, the said justices, have also now here enquired into the circumstances and character of the said* G. H. *and on such examination and enquiry, we, the said justices, think it proper that such child should be bound apprentice to the said* G. H. *Now, therefore, we the said justices, do declare, that the said* G. H. *is a fit person to whom the said child may be properly bound as apprentice as aforesaid. And we do therefore hereby order and direct, that the said* A. B. *and* C. D. *the overseers of* ——— *aforesaid, being the place to which such child doth belong, shall be and are at liberty to bind such child apprentice accordingly. Given under our hands and seals this* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———.

J. C. (L. S.)
J. P. (L. S.)

B.

*B. Form of Indenture of Apprenticeship in pursuance of Order (A), and according to stats. 43 *Eliz. c.*2. and 56 *G.*3. *c.*139. § 1. with Proviso directed to be added by 32 *G.*3. *c.*57. § 1. in case of the Death of the Master or Mistress. Form also of the Justices' Allowance of the Indenture pursuant to stats. 43 *El. c.*2. § 5. p. 138. and 56 *G.*3. *c.*139. § 11. p. 141.

This Indenture, *made the* ——— *day of* ——— *in the* ——— *year of the reign of our sovereign lord* George *the Fourth, by the grace of God, of the united kingdom of* Great Britain *and* Ireland, *king, defender of the faith, and in the year of our Lord one thousand eight hundred and* ——— *Witnesseth, that* J. K. *and* L. M. *churchwardens of the parish of* ——— *in the county of* ———, *and* A. B. *and* C. D. *overseers of the poor of the said parish, by and with the consent of the two of his majesty's justices of the peace for the said county, whose names are hereunto subscribed, one of them, to wit,* ——— *Esquire, being of the quorum, and by virtue and in pursuance of an order in writing made by and under the hands and seals of* J. C. *and* S. P. *Esquires, justices of the peace in and for the said county, in pursuance of the statute in that case made and provided, and bearing date the* ——— *day of* ——— *instant, have put and placed, and by these presents do put*

and place T. F. *aged* ——— *years, or thereabouts, a poor child of the said parish of* ——— *apprentice to* G. H. *of* ———, *&c. with him to dwell and serve from the day of the date of these presents, until the said apprentice shall accomplish his full age of* ——— *years,* [or, if a female, add, *or until the time of her marriage, which shall first happen,*] *according to the statutes in that case made and provided. During all which term, the said apprentice, his said master faithfully shall serve, in all lawful businesses, according to his power, wit, and ability, and honestly, orderly, and obediently, in all things demean and behave himself towards his said master and all his during the said term. And the said* G. H. *for himself, his executors and administrators, doth covenant and grant, to and with the said churchwardens and overseers, and every of them, their and every of their executors and administrators, and their and every of their successors for the time being, by these presents, that he the said* T. F. *the said apprentice, in the art, trade, or mystery of* ——— *shall and will teach and instruct, or cause to be taught and instructed, in the best way and manner that he can during the said term* [here insert any special or particular covenant]; *and shall and will during all the term aforesaid, find, provide, and allow unto the said apprentice, meet, competent, and sufficient meat, drink, apparel, lodging, washing, and all other things necessary and fit for an apprentice: (provided always, that the said last-mentioned covenant on the part of the said* C. H., *his executors and administrators, to be done and performed, shall continue and be in force for no longer time than for three calendar months next after the death of the said* G. H., *in case he the said* G. H. *shall happen to die during the continuance of such apprenticeship, according to the provisions of an act passed in the thirty-second year of the reign of king* George *the Third, intituled* "An Act for the further regulation of parish apprentices," *and also of another act passed in the fifty-sixth year of the reign of king* George *the Third, intituled* "An Act to regulate the binding of parish apprentices.") *And also shall and will so provide for the said apprentice, that he be not any way a charge to the said parish of* ——— *or parishioners of the same: but of and from all charge, shall and will save the said parish and parishioners, harmless and indemnified, during the said term.*

In witness whereof the parties above-said to these present indentures interchangeably have set their hands and seals, the day and year first above written.

Sealed and delivered in the presence of ———.

We, whose names are hereunder written, justices of the peace, acting in and for the county of ——— *aforesaid (whereof one is of the quorum), do consent to the putting forth* T. F. *an apprentice, according to the intent and meaning of this indenture; and do sign and seal this our allowance of such indenture of apprenticeship before the same hath been executed by any of the other parties thereto, in pursuance of the statute in such case made and provided. Given under our hands and seals this* ——— *day of* ——— *in the year of our Lord one thousand eight hundred and* ———.

J. C. (L. S.)
J. P. (L. S.)

C.

C. Special Order under stat. 56 *G*.3. *c*.139. § 1. (p. 139.) for binding a poor Child Apprentice at a greater Distance than Forty Miles from the Place of such Child's Settlement.

County of Stafford, to wit. } *WHEREAS* A. B. *and* C. D. *overseers of the poor of the parish of* ——— *in the county of* Stafford, *have, on this* ——— *day of* ——— *in the* ——— *year of the reign of our sovereign lord* George *the* ——— *at the parish of* ——— *in the said county, brought before us* J. C. *and* S. P. *Esquires, two of his majesty's justices assigned to keep the peace, acting in and for the said county of* Stafford, *and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed,* T. F. *a poor male or female child* [as the case may be] *of the age of* ——— [exceeding nine years] *and upwards, belonging to and having a settlement in the said parish of* ——— *in the said county, and whose parents* E. F. *and* C. F. *are not able to maintain such child; and the said* A. B. *and* C. D. *as such overseers of the poor of the parish of* ——— *aforesaid, have proposed to us the said justices, to bind such child to be an apprentice to one* G. H. *of the parish of* ——— *in the county of* ——— *he the said* ——— *residing* [or, according to the fact, *having an establishment in trade at which it is intended such child should be employed,*] *out of the same county of* Stafford *aforesaid, at a greater distance than forty miles from the parish of* ——— *aforesaid, to which such child so belongs as aforesaid; and the said parish of* ——— *to which such child so belongs as aforesaid, being also more than forty miles from the city of* London, *and, as an apprentice, with him the said* G. H. *to dwell and serve until the said* T. F. *shall come to the age of* ——— *years,* [or if a female, add, *or until the time of her marriage, which shall first happen,*] *according to the statutes in such case made and provided: and whereas we, the said justices, having now here enquired into the propriety of binding such child apprentice to the said* G. H. *and having particularly enquired and considered whether such person doth reside and have his place of business within a reasonable distance from the place to which such child doth so belong, as aforesaid, having regard to the means of communication between such places, and whether any circumstances make it fit, in the judgment of us the said justices, that such child should be placed apprentice at a greater distance:* [*and whereas also we have now here examined the said* E. F. *and* C. F. *the father and mother of the said child, and who reside in the said parish and place to which the said child doth belong,* (if this was not done, these words should be omitted).] *And having particularly enquired of the said* E. F. *and* C. F. [or A. B. *and* C. D.) *and otherwise, as to the distance of the residence and place of business of the said* G. H., *having, also, now here enquired into the circumstances and character of the said* G. H.: *and whereas, also, we, the said justices, have now here particularly enquired into and considered the grounds for allowing of the apprenticing of such child to the said* G. H. *so residing and having an establishment in trade, at a greater distance than forty miles from the said parish and place to which such child so belongs, as aforesaid, we do hereby find the grounds following; that is to say,* [here set out the reasons, according to the fact, thus: *because it appears to us, the said justices, that there is no person or persons within the said distance of forty miles to whom such child may be*

properly bound apprentice, &c.] And whereas also, on such examination and enquiry, we, the said justices, think it proper that such child should be bound apprentice to the said G. H., *notwithstanding he the said* G. H. *resides* [or, according to the facts, *has an establishment in trade at a greater distance than forty miles from the said parish and place to which the said child belongs, as aforesaid*]. *Now, therefore, we, the said justices, do declare, that the said* G. H. *is a fit person to whom the said child may be properly bound as apprentice as aforesaid; and we do, therefore, hereby order and direct, that the said* A. B. *and* C. D. *the overseers of the poor of the parish of* ——— *aforesaid, being the place to which such child doth belong, shall be and are at liberty to bind such child apprentice accordingly. Given under our hands and seals this* ——— *day of* ——— *in the year of our Lord one thousand eight hundred and* ———.

D. Form of Justices' Allowance of the Indenture pursuant to the last Order (C). See stat. 56 *G.* 3. *c.* 139. § 2. p. 139. D.

WE ——— *and* ——— *Esquires, whose names are hereunder written, two of his majesty's justices of the peace for the county of* Stafford (*whereof one is of the quorum*), *do consent to the putting forth* ——— *of* ——— *as an apprentice, according to the intent and meaning of th's indenture; it having been proved, upon oath, before us that due notice, in writing, has been given by the overseers of the poor of the parish of* ——— [the parish binding such apprentice] *to the overseers of the poor of the parish of* ——— [the parish in which such apprentice is to serve] *of such binding being intended, and do sign this our allowance of such apprenticeship in pursuance of the statute in such case made and provided. Dated this* ——— *day of* ——— *one thousand eight hundred and* ———.

E. Form of Order (to be indorsed on Indenture) in case of Original Master removing into another County, or Forty Miles distant from the Parish where the Apprentice was bound, either for the Apprentice to continue with such Original Master, or be discharged, or bound, or assigned over to any other Person. See stat. 56 *G.* 3. *c.* 139. § 8. p. 140. E.

County of Stafford, to wit. } *WHEREAS* G. H., *the master of the apprentice in the within indenture mentioned, is about to quit his present residence at* ——— *and to remove out of the same county of* Stafford, *or at least forty miles from the place of residence where the said* T. F. *was bound apprentice, and has given fourteen days previous notice, in writing, to the churchwardens and overseers of the poor of the parish of* [the parish in which the apprentice resides at the time of removal]: *And whereas the said* T. F. *the apprentice, as also the said* G. H. *and the overseers of the poor of the said parish of* ——— *did on the day of the date hereof appear before us, the justices aforesaid, and upon enquiry we do find* [here insert whether the apprentice is to continue with his master in another parish, or whether to be assigned or discharged]: *and we, the said justices, do hereby order that the said* T. F. *the apprentice aforesaid, may* [here insert as above];

and we do further order, that the said G. H. *the former master of the said* T. F. *do pay to* ——— *the intended new master of the said* T. F. *the sum of* ——— *as and for the expense of assigning or binding of the said apprentice to the said* ——— *as aforesaid, being, in our judgment, a reasonable part and proportion of the original apprentice fee paid to the said* ——— *on his being bound an apprentice to the said* ———. *Given under our hands and seals this* ——— *day of* ——— *one thousand eight hundred and* ———.

A. P.
J. P.

F.

F. Form of Conviction, on stat. 56 *G.*3. *c.*139. See § 15. p. 142.

BE it remembered, that on the ——— *day of* ——— *in the year of our Lord* ——— *is convicted before us* ——— *of his majesty's justices of the peace for the county of* ——— *upon the information of* ——— *for that* [here state the offence] *contrary to the form of the statute passed in the fifty-sixth year of the reign of his majesty king* George *the Third, intituled* An act to regulate the binding of parish apprentices, *and for which offence we do adjudge that the said* ——— *shall forfeit and pay the sum of* ——— *to be paid and applied as follows* [here state the application of the penalty]; *and in case such penalty shall not be paid by the said* ——— *or levied by distress upon* ——— *goods and chattels, within* ——— *days from the date of this conviction, we adjudge that the said* ——— *shall be imprisoned in* ——— *for the space of* ———. *Given under our hands and seals the day and year first above mentioned.*

F a.

F. a. Information for not receiving a poor apprentice. [Stat. 8 & 9 *W.*3. *c.*30. § 5. see *ante*, p. 150.]

County of ——— } *THE information and complaint of* A. B., *churchwarden* [or *overseer of the poor*, as the case may be,] *of the parish of* ——— *in the said county, made upon oath before me,* J. P. *one* (a) [or, *us, two*] *of his majesty's justices of the peace in and for the said county of* ——— *the* ——— *day of* ——— *in the year of our Lord one thousand eight hundred and twenty* ———. *Who says that, he* A. B. *and* C. D. *churchwardens, and* E. F. *and* G. H. *overseers of the poor of the said parish of* ——— *by the assent of* ——— *and* ———, *esquires, two of his majesty's justices of the peace for the said county dwelling near to* [or *in*] *the said parish of* ——— *one whereof is of the quorum, did endeavour to bind* A. P. *a poor male child of the said parish whose parents are not able to maintain him, apprentice to* A. M. *of* ——— *in the said parish, taylor, and for that intent did prepare and duly perfect one pair of indentures pursuant to the statute in that case made and provided, which said pair of indentures was signed and confirmed by the said justices; and the said* A. B. *further says that he the said* A. M. *hath refused and doth refuse to receive and provide for the said* A. P. *as an apprentice, and also to execute another part of the said indentures being duly tendered to him by the said churchwardens and overseers of the poor, whereby the said* A. M. *hath forfeited the sum of* 10*l.* *to the use of the poor of the said parish of* ——— *in which such offence has*

(a) See 3 *G.*4. *c.*23. § 2. *infra*, tit. Conviction.

been committed. Whereupon the said A. B. *prays the judgment of two of his majesty's justices of the peace for the said county of* ——— *in the premises, and that thesaid* A. M. *may be summoned to answer the premises accordingly.* A. B.

Before me J. P. [or *us,* J. P. *and* K. P. as the case may be].

G. Warrant to levy 10*l.* for not receiving a poor Apprentice; on the statute of 8 & 9 *W.*3. *c.*30. § 5. (*ante*, p. 150.)

G.

Westmorland. To the (*a*) the constables of ———

WHEREAS A. B. *and* C. D. *churchwardens, and* E. F. *and* G. H. *overseers of the poor of the parish of* ——— *in the said county, by the assent of* [*us*] ——— *two of his majesty's justices of the peace for the said county dwelling near to* [or *in*] *the said parish of* ——— *one whereof is of the* quorum, *did endeavour to bind* A. P. *a poor male child of the said parish, whose parents are not able to maintain him, apprentice to* A. M. *of* ——— *in the said parish, tailor, and for that intent did prepare and duly perfect one pair of indentures pursuant to the statute in such case made and provided, which said pair of indentures was signed and confirmed by* [us] *the said two justices: and whereas the said* A. M. *is duly convicted before us the justices aforesaid, as well upon the oath of the said* A. P. *as otherwise, for that he the said* A. M. *hath refused, and doth refuse to receive and provide for the said* A. P. *as an apprentice, and also to execute another part of the said indentures, being duly tendered to him by the said churchwardens and overseers of the poor, whereby the said* A. M. *hath forfeited the sum of ten pounds: These are, therefore, in his said majesty's name, to require and command you, to make distress of the goods and chattels of him the said* A. M. *and if within the space of* [six] *days next after such distress by you made, the said sum of* 10*l. together with reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale pay the said sum of* 10*l. to the overseers of the poor of the said parish of* ——— *where the said offence was committed, for the use of the poor of the said parish; returning the overplus upon demand unto him the said* A. M. *the reasonable charges of taking, keeping, and selling the said distress, being thereout first deducted. Herein fail you not. Given under our hands and seals the* ——— *day of* ——— *in the year* ———.

Practical directions.

Note.—As an appeal is given to the sessions against the appointment of an apprentice to be bound to any person as aforesaid, it is proper either not to make out, or not to execute, the warrant of distress, until after the next sessions.

And it is to be observed, that one *precedent* alone in this case is here inserted, for brevity sake, as being not in a matter of constant practice; but it is to be understood, in all such like cases that there must first be a *complaint* or *information* in writing, then a *summons* of the party accused, or *warrant* as the case may be, and a hearing and determining of the cause, and *conviction* thereupon if the party shall be found to be guilty. But as the special

(*a*) The names, if certainly known, had better be stated, see *R.* v. *Weir,* 1 *B.* & *Cr.* 288. *post,* tit. Distress; and see tit. Arrest.

fact must be the same throughout all the forms of proceedings it is easy from one to frame all the rest.

The summons may be to the following effect:

The information and complaint of A. I. *one of the overseers of the poor of the parish of* ——— *that* A. O. *of the said parish of* ——— *farmer, being an occupier of certain lands and tenements in the parish of* ——— *aforesaid, hath refused and doth refuse to receive and provide for* A. P. *an apprentice duly bound to him by indentures by the churchwardens and overseers of the poor of the said parish of* ——— *the said* A. P. *being a poor child of the said parish of* ——— *whose parents are not able to maintain him, and that he the said* A. O. *hath also refused and doth refuse to execute the other part of the said indentures, the same being duly tendered to him for that purpose, whereby he the said* A. O. *hath forfeited the sum of* 10*l*. *These are therefore, &c.*

H.

H. Form of the Assignment of such a Parish Apprentice, with the Consent of Two Justices, by Indorsement on the Indenture or Counterpart, by stat. 32 *G*. 3. *c*. 57. § 7. (*ante*, p. 153.)

County of } ——— } *BE it remembered, that the within named* F. M. [the master] *by and with the consent and approbation of* I. P. *and* K. P. *two of his majesty's justices of the peace for the said county, whose names are subscribed to the consent hereunder written, doth hereby assign* A. P. *the apprentice within named, unto* N. M. [the new master] *to serve him during the residue of the term within mentioned; and that he the said* N. M. *doth hereby agree to accept and take the said* A. P. *as an apprentice for the residue of the said term, and doth hereby acknowledge himself, his executors and administrators, to be bound by the agreements and covenants within mentioned on the part of the said* F. M. *to be done and performed, according to the true intent and meaning thereof, and pursuant to the provisions of an act passed in the thirty-second year of the reign of king* George *the third, intituled* An act for the further regulation of parish apprentices. *In witness whereof we, the said* F. M. *and* N. M., *have hereunto set our hands, this* ——— *day of* ———.

WE, two of his majesty's justices of the peace abovementioned, do consent thereto. Witness our hands this ——— *day of* ———.

I. P.
K. P.

I.

I. Form of the like Assignment by a separate Instrument.

County of { ——— { *WHEREAS it appears unto us,* I. P. *and* K. P. *two of his majesty's justices of the peace for the said county, whose names are subscribed to the consent hereunder written, that* A. P. *was bound an apprentice by the churchwardens and overseers of the poor of the parish* ——— *to* F. M. *of the same parish,* ——— *by indenture bearing date on or about the* ——— *day of* ——— *until the said* A. P. *should attain his age of twenty-one years. Now be it remembered, that the said* F. M. *by and with the consent, &c.* [and so, to the end, as before, *mutatis mutandis.*]

K. Form of the Register of a Parish Apprentice; under Stat. 42 G.3. c.46.

Number.	Date of Indenture.	Name of the Apprentice.	Sex.	Age.	His or her Parents' Names.	Their Residence.	Name of Persons to whom bound or assigned, as the case may be.	His or her Trade.	His or her Residence.	Term of the Apprenticeship or Assignment.	Apprentice or Assignment Fee.	Overseers Parties to the Indenture or Assignment.	Magistrates assenting.	Magistrates resident in any other County, within which the place shall be situated where the Child is to serve.
													(*to be signed by themselves.*)	N. B. This is added in consequence of stat. 56 G.3. c.139. *ante* § IV. p. 138, 139.

L.

L. Form of Conviction under Stat. 42 G.3. c.46. § 2. *ante*, p. 156.

BE it remembered, that on the —— *day of* —— *in the year of our Lord one thousand eight hundred and* —— A. B. *is convicted before us, two of his majesty's justices of the peace for the* —— [specifying the offence, and the time and place when and where committed, as the case may be,] *contrary to an act made in the forty-second year of the reign of king* George *the Third, intituled* [here set forth the title of this act.] *Given under our hands and seals the day and year above mentioned.*

M.

M. Assignment of an Apprentice.

TO all to whom these presents shall come: I A. M. *of* —— *send greeting. Whereas my apprentice* A. P. *hath divers years yet to come and unexpired of his apprenticeship, to wit,* —— *whole years from the* —— *day of* —— *now last past, as by his indenture of apprenticeship to be sealed doth appear; Now know ye, that I the said* A. M. *for divers good causes and considerations me hereunto moving, have given, granted, assigned, and set over, and by these presents do fully and absolutely give, grant, assign, and set over, unto* A. S. *of* —— *all such right, title, duty, term of years to come, service, and demand whatsoever, which I the said* A. M. *have in or to the said* A. P. *or which I may or ought to have in him by force and virtue of the said indenture of apprenticeship. And moreover, I the said* A. M. *do by these presents covenant, promise, and agree to and with the said* A. S. *his executors and administrators, that notwithstanding any thing by me the said* A. M. *to be done to the contrary, the said* A. P. *shall, during the said term of* —— *years, well and truly serve the said* A. S. *as his master, and his commandments lawful and honest shall do, and from his service shall not absent himself during the said term. Provided, that the said* A. S. *shall well intreat and use him the said* A. P. *and him the said* A. P. *in the craft, mystery, and occupation of a* —— *which he the said* A. S. *now useth, after the best manner that he can or may, shall teach, instruct, and inform, or cause to be taught, instructed, and informed, as much as thereunto belongeth, or in anywise appertaineth, and shall also during the same term find and allow unto the said* A. P. *sufficient meat, drink, apparel, washing, lodging, and all other things needful or meet for an apprentice. In witness, &c.*

N.

N. Summons of the Master for misusing his Apprentice; on stat. 5 *Eliz.* c.4. § 35. (*ante*, p. 168.)

County of —— } To the constable of ——.

WHEREAS complaint and information have been made unto me —— *one of his majesty's justices of the peace in and for the said county* [or, "*to me,* —— *mayor,*" &c. or as the case may be,] *by* A. P. *apprentice to* A. M. *of* —— *in the said county, shoemaker, that the said* A. M. *hath misused and evil intreated him the said* A. P. *by cruel punishment and beating him the said* A. P. *without just cause, and by not allowing unto him sufficient meat, drink, apparel* [or as the case shall be.] *These are therefore in his majesty's name to command you to summon the said* A. M. *to appear before me at the house of* —— *in the said county, on*

the ——— day of ——— at the hour of ——— in the afternoon of the same day, to answer unto the said complaint, and to be further dealt with according to law. Herein fail you not. Given under my hand and seal the ——— day of, &c.

Note.—A *summons*, rather than a *warrant*, in all such like cases, between party and party, is generally most eligible; yet in this case it seemeth, that a warrant is justifiable to apprehend the master, and bring him before the justice (especially if he shall contemn the summons); because it is required, that he shall give security to the justice to appear at the sessions, if he shall not conform to the justice's order in the premises.

O. Summons of the Apprentice, on complaint of the Master; on stat. 5 *Eliz. c.*4. § 35. *ante*, p. 168. O.

County of ——— } To the constable of ———.

WHEREAS complaint and information have been made unto me ———, one of his majesty's justices of the peace in and for the said county, by A. M. *of ——— in the said county, husbandman, that* A. P. *now being an apprentice to him the said* A. M. *is negligent, stubborn, disorderly,* [or as the case shall be] *and doth not his duty to him the said* A. M. *his master; These are therefore to command you to summons the said* A. P. *to appear before me, at ——— in the said county, on the ——— day of ——— at the hour of ——— in the afternoon of the same day, to answer to the said complaint, and to be further dealt with according to law. Herein fail not. Given under my hand and seal the ——— day of, &c.*

[As to complaints by master or his steward, &c. *on oath* under stats. 20 *G.* 2. *c.* 19. and 4 *G.* 4. *c.* 34. § 1. See *post*, (Aa. Bb. Cc.)

P. Order of Discharge by Four Justices at the Sessions; on stat. 5 *Eliz. c.*4. § 35. *ante*, p. 168. P.

County of ——— } *AT a general quarter sessions of the peace holden at ——— in and for the county aforesaid, the ——— day of ——— in the ——— year of the reign of our lord* George *the Fourth, by the grace of God of* Great Britain, *and* Ireland, *king, defender of the faith, and so forth; Before ——— justices of our said lord the king, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, and of the* quorum, *It is ordered as followeth:*

Upon the petition of A. P. *apprentice to* A. M. *of ——— in the said county, husbandman, to be relieved upon certain neglects of the said master in instructing him in his trade, and in misusing and evil intreating the said apprentice by cruel punishment* [or as the case shall be]: *And the said master having likewise appeared upon his recognizance taken before* J. P. *esquire, one of the said justices, to answer to the complaint of the said petition, and having proved nothing whereby to clear himself of the said complaint; but on the contrary, the said* A. P. *having given full proof of the truth of the said complaint to the satisfaction of the said court: We therefore, whose hands and seals are hereunto set, being four of the said justices, and of the* quorum, *do hereby order, pronounce, and de-*

clare, that the said apprentice shall be, and is hereby discharged and freed from his said apprenticehood: And this to be a final order betwixt the said master and apprentice, any thing contained in their indentures of apprenticeship, or otherwise, to the contrary notwithstanding. Given under our hands and seals the day and year first above written.

Q.

Q. Complaint by an Apprentice to One Justice (See stat. 3 *G.* 4. *c.* 23. § 2. tit. **Conviction**) or to two or more Justices against his Master for misusing him; on stat. 20 G. 2. *c.* 19. § 3. p. 172.

County of } *THE information and complaint of* A. P. *apprentice to* A. M. *of* ——— *in the said county, husbandman, exhibited before me* J. P. *one* [see stat. 3 G. 4. *c.* 23. § 2. or *us* ——— *and* ——— *two*] *of his majesty's justices of the peace in and for the said county, the* ——— *day of* ——— *in the year, &c.*

Who saith, that he the said A. P. *is an apprentice bound by indenture to* A. M. *of* ——— *aforesaid, husbandman; and that he the said* A. M. *hath misused and ill treated him the said apprentice, and particularly* [as the case shall be].

Before me, *J. P.* [or us, *J. P. K. P.* as the case may be.] A. P.

R.

R. Summons of the Master thereon.

County of } To (*a*) the constable of ———.

WHEREAS information and complaint hath been made unto me J. P. *one* [see stat. 3 G. 4. c. 23. § 2.; or *us* ——— *two* as the case may be,] *of his majesty's justices of the peace in and for the said county, by* A. P. *apprentice to* A. M. *of* ——— *in the said county, husbandman, that he the said* A. M. *hath misused and ill treated him the said* A. P. *and particularly* [as the case shall be]: *These are therefore to require you to summon the said* A. M. *to appear before me* [or *us*, as the case shall be,] *at* ——— *in the said county, on the* ——— *day of* ——— *to answer unto the said information and complaint. And be you then there to certify what you shall have done in the execution hereof. Herein fail you not. Given under my* [or *our*, as the case shall be,] *hands and seals the* ——— *day of* ——— *in the year* ———.

J. P. *L. S.*
[or
J. P. *L. S.*
K. P. *L. S.*]

S.

S. Discharge of an Apprentice by Two Justices, on the Master misusing him; by stat. 20 *G.* 2. *c.* 19. § 3. p. 172.

County of } *WHEREAS complaint hath been made before us* ——— *two of his majesty's justices of the peace in and for the said county, by* A. P. *apprentice to* A. M. *of* ———, *in the said county, tailor, that he the said* A. M. *hath misused and evil treated him the said apprentice, and particularly* (as the case shall be): *and whereas the said* A. M. *hath appeared before us in pursuance of our summons to that purpose, but hath not cleared himself of and from the said accusation and complaint, but on the contrary the said* A. P. *hath made full proof of the truth thereof,*

(*a*) See p. 198, n. (*a*).

and the said A. M. *now stands duly convicted of the same, before us upon oath; We therefore by these presents do discharge him the said* A. P. *of and from his apprenticeship to the said* A. M. *any thing in the indenture of apprenticeship made betwixt them, or otherwise howsoever, to the contrary notwithstanding. Given under our hands and seals the* ——— *day of, &c.*

[Or, *And whereas it hath been duly proved before us, as well upon the oath of* A. C. *constable of* ——— *aforesaid, as otherwise, that he the said* A. C. *did duly summon the said* A. M. *to appear before us at a reasonable time in the said summons mentioned and specified; but notwithstanding the same, he the said* A. M. *hath not appeared before us according to such summons: We therefore having duly examined into the matter of the said complaint, and the truth thereof having been fully proved before us upon oath, do discharge, &c.*]

T. Discharge of a Parish Apprentice on stat. 32 G. 3. c. 57. § 11. *ante*, p. 172.

T.

County of ——— } *WHEREAS complaint has been made before us* J. P. *and* K. P. *two of his majesty's justices of the peace in and for the said county, by* A. P. *a parish apprentice to* A. M. *of* W. *in the said county* ———, *that he the said* A. M. *has misused and evil treated him the said apprentice, and particularly* ———: *And whereas the said* A. M. *has appeared before us, in pursuance of our summons for that purpose, yet has not cleared himself of and from the said accusation and complaint, but on the contrary, the said* A. P. *has made full proof of the truth thereof before us upon oath. We therefore by these presents do discharge him the said* A. P. *of and from his apprenticeship to the said* A. M. *any thing in the indenture of apprenticeship, whereby the said* A. P. *is bound to the said* A. M., *to the contrary notwithstanding.*

And we do hereby order, that he the said A. M. *shall, upon due notice hereof, forthwith deliver up to the said apprentice his clothes and wearing apparel, and also pay immediately to the churchwardens or overseers of the poor of the parish of* ———, *in the said county, to which parish the said apprentice belongs, some or one of them, the sum of* ———, *to be applied by them, some or one of them, under our order, for the benefit of the said apprentice, as to us shall seem meet. Given under our hands and seals the* ——— *day of* ———, *one thousand eight hundred and* ———.

U. Complaint thereon that the Money has not been paid.

U.

County of ——— } *THE information and complaint of* A. O. *one of the overseers of the poor of the parish of* W. *in the said county, made on oath before us* J. P. *and* K. P. *two of his majesty's justices of the peace in and for the said county, this* ——— *day of* ——— *one thousand eight hundred and* ———, *who on his oath aforesaid says, that by an order under the hands and seals of us the said* J. P. *and* K P. *two of his majesty's justices of the peace in and for the said county, which said order he now here produces to us the said justices,* A. P. *the parish apprentice of* A. M. *of the said parish of* ———, *was discharged of and from his apprenticeship to the said* A. M. *for ill treatment; and further, that in and by the said order the said* A. M. *was ordered upon due notice of the said order, forthwith to deliver up to the said apprentice his clothes and wearing apparel, and also to pay immediately*

to the churchwardens or overseers of the poor of the said parish of ———, *to which parish the said* A. P. *belongs, some or one of them, the sum of* ———, *to be applied by them, some or one of them, under the order of us the said justices, for the benefit of the said apprentice: and that of the said order the said* A. M. *has had due notice, but that the said* A. M. *has nevertheless not paid the said sum of* ———, *so directed to be paid by him the said* A. M. *nor any part thereof, but refuses so to do. Whereupon he the said* A. P. *prays that justice may be done in the premises.*

Before us,

W.

W. Warrant of Distress thereon, according to stat. 32 *G.*3. *c.*57. § 11.12. *ante*, p. 172, 173.

County of ——— } To ——— (a) the constable of ——— in the said county.

WHEREAS by an order under the hands and seals of us J. P. *and* K. P. *two of his majesty's justices of the peace in and for the said county, dated the* ——— *day of* ——— *one thousand eight hundred and* ———, A. P. *the parish apprentice of* A. M. *of* ———, *in the said county, was discharged of and from his apprenticeship to the said* A. M. *for ill treatment; and whereas in and by the said order the said* A. M. *was ordered upon due notice of the said order forthwith to deliver up to the said discharged parish apprentice his clothes and wearing apparel, and also to pay immediately to the churchwardens or overseers of the poor of the said parish of* ———, *to which parish the said* A. P. *belongs, some or one of them, the sum of* ———, *to be applied by them, some or one of them, under the order of us the said justices, for the benefit of the said apprentice: and whereas it appears unto us upon the oath of* A. O. *one of the overseers of the poor of the said parish of* ———, *that the said* A. M. *has had due notice of our said order, but has not paid the said sum of* ———, *so directed to be paid by him the said* A. M. *nor any part thereof, but on the contrary has refused and still refuses so to do,* and thereupon the said* A. O. *prays that justice may be done in the premises. These are therefore to command you [that at the expiration of seven days from the notice of our said order, you do make distress of the goods and chattels of the said* A. M. *unless before the expiration of the said seven days, he the said* A. M. *give notice to the churchwardens and overseers of the said parish of* ———, *or to one of them, of his intent to appeal to the next general quarter sessions after such order made against the said order of discharge, or the said order of payment, in which case you are to postpone the taking of the said distress till after the said next sessions shall have been holden; and if at the sessions, the said* A. M. *shall not appear in support of his said appeal, then you are hereby further commanded to add the sum of* 40s. *to the said expenses of distress, and immediately upon such non-appearance, or upon the confirmation at the said sessions of the said order of discharge or payment, you are to proceed forthwith to make the said distress] that you do levy the same by distress of the goods and chattels of him the said* A. M. *together with the reasonable expenses of such distress; and if within the space of four days next after*

(a) It is expedient to direct a warrant to the constable by name if known, see *Rex* v. *Weir*, 1 *B.* & *Cr.* 288, and *post*, tits. Arrest, Distress.

such distress by you made, the said sum of ———, *together with the reasonable expenses of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by the sale thereof, that you pay the said sum of* ——— *unto the churchwardens or overseers of the poor of the said parish of* ———, *to be by them applied as aforesaid, returning the overplus, upon demand, unto the said* ———, *the reasonable charges of taking, keeping, and selling the said distress, being thereout first deducted. Given under our hands and seals the* ——— *day of* ——— *one thousand eight hundred and* ———.

The above is to be adopted only (MS. *K.*) in the last case described in the latter part of the 32 *G.*3. *c.*57. § 12., and if the warrant for distress be issued before the expiration of the seven days; but it would be better to wait till seven days after the notice shall have expired: in which case, if no notice of appeal shall have been given, the parts between the brackets must be omitted. If the appeal be made, and the order confirmed; or if the appeal be made, and the master do not appear, then the warrant of distress must be made after the sessions, *mutatis mutandis*. Thus, after the asterisk: *And that within seven days after such notice of the said order, the said* A. M. *did give notice to* ———, *the churchwardens and overseers of the said parish of* ———, [or, *to* ———, *one of the churchwardens*, &c.] *of his intent to appeal against the said order at the then next sessions of the peace, to be holden for the said county. And that at the said sessions the said order was then and there confirmed*, [or, *but that at the said sessions the said* A. M. *did not appear in support of his said appeal*]. *These are therefore to command you*, &c. &c. [as before, only that after the words *thereout first deducted*, should be added, in case of non-appearance, *and that you add* 40*s. to the said reasonable expenses on account of the said non-appearance of the said* A. M. *as aforesaid.*]

X. Complaint against a Master for not delivering up a discharged Parish Apprentice his Clothes; on stat. 32 *G.*3. *c.*57. § 11. *ante*, p. 172.

County of ——— } *THE information and complaint of* A. P. *the late parish apprentice of* A. M. *of* ———, *in the said county, made on oath before us* J. P. *and* K. P. *two of his majesty's justices of the peace in and for the said county, this* ——— *day of* ——— *one thousand eight hundred and* ———, *who, on his oath aforesaid, says, that by an order under the hands and seals of us the said justices, dated the* ——— *day of* ——— *one thousand eight hundred and* ———, *which said order he now here produces to us the said justices, he the said* A. P. *was discharged from his apprenticeship to the said* A. M. *for ill-treatment; and that in and by the said order, the said* A. M. *(among other things) was ordered upon due notice of the said order, forthwith to deliver up to him the said discharged parish apprentice his clothes and wearing apparel; and that the said* A. M. *had due notice of the said order on the* ——— *day of* ——— *one thousand eight hundred and* ———, *and that this complainant did then demand his clothes and wearing apparel of and from the said* A. M. *according to the said order, which*

he the said A. M. *then refused, and still refuses, to deliver up, wherefore he the said* A. P. *prays us the said justices that justice may be done in the premises. Before us,*

Y.

Y. Order thereupon.

County of } ——— *WHEREAS by an order under the hands and seals of us* J. P. *and* K. P. *two of his majesty's justices of the peace in and for the said county, dated the* ——— *day of* ——— *one thousand eight hundred and* ———, A. P. *the parish apprentice of* A. M. *of* ———, *in the said county, was discharged of and from his apprenticeship to the said* A. M. *for ill-treatment; and whereas in and by the said order the said* A. M. (*among other things*) *was ordered upon due notice of the said order, forthwith to deliver up to the said discharged parish apprentice his clothes and wearing apparel. And whereas information and complaint have been made unto us the said justices, by and upon the oath of the said* A. P. *that the said* A. M. *had due notice of our said order on the* ——— *day of* ——— *one thousand eight hundred and* ———, *and that the said* A. P. *did then demand his clothes and wearing apparel, but that the said* A. M. *then refused, and still refuses to deliver up to him, the said discharged parish apprentice, such clothes and wearing apparel as aforesaid, according to the directions of the said order: and thereupon the said* A. P. *prays us the said justices, that justice may be done in the premises. And whereas the said* A. M. *has been duly summoned to appear before us the said justices to answer unto the said complaint, but has not shewn unto us any just cause why he refuses to comply with the directions of the said order, and to deliver up the said clothes and wearing apparel as thereby commanded: We do therefore hereby order the said* A. M. *upon due notice of this our order, to pay to the churchwardens or overseers of the poor of the said parish of* ———, *the sum of* ———, [not exceeding 5*l.*] *to be by them applied as the law directs. Given under our hands and seals, the* ——— *day of* ——— *one thousand eight hundred and* ———.

Z.

Z. Warrant of Distress thereon.

County of ———. To ——— (*a*) the constable of ———.

WHEREAS by an order under the hands and seals of us J. P. *and* K. P. *two of his majesty's justices of the peace in and for the said county, dated the* ——— *day of* ——— *one thousand eight hundred and* ———, A. P. *the parish apprentice of* A. M. *of* ——— *in the said county, was discharged of and from his apprenticeship to the said* A. M. *for ill treatment: And whereas in and by the said order the said* A. M. (*among other things*) *was ordered upon due notice of the said order forthwith to deliver up to the said discharged parish apprentice his clothes and wearing apparel: And whereas information and complaint have been made unto us the said justices, by and upon the oath of the said* A. P. *that the said* A. M. *had due notice of our said order on the* ——— *day of* ——— *one thousand eight hundred and* ———, *but refused to deliver up to him, the said discharged parish apprentice, such clothes and wearing apparel as aforesaid, according to the directions of the said order: And*

(*a*) Vide *ante*, 198. note (*a*).

whereas the said A. P. *was duly summoned to appear before us on the* ——— *day of* ——— *last, to answer unto the said complaint, but did not shew unto us any just cause why he refused to comply with the directions of the said order, and deliver up the said clothes and wearing apparel as thereby commanded: We the said justices did thereupon then and there, by an order under our hands and seals, order that he the said* A. M. *should, upon due notice of the said order last mentioned, pay to the churchwardens or overseers of the poor of the said parish of* ——— *the sum of* ——— *to be by them applied as the law directs: And whereas it appears unto us the said justices, upon the oath of* A. O. *one of the overseers of the poor of the parish of* ——— *aforesaid, that the said* A. M. *has had due notice of our said order last mentioned, but has not paid the said last mentioned sum of* ——— *so directed to be paid by the said* A. M. *nor any part thereof: These are therefore to command you to make distress of the goods and chattels of him the said* A. M. *and if within the space of four days next after such distress by you made, the said last mentioned sum of* ——— *together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the goods and chattels so by you distrained, and out of the money arising by the sale thereof, that you pay the said last mentioned sum of* ——— *unto the churchwardens or overseers of the poor of the parish of* ——— *to be by them applied as aforesaid, returning the overplus, upon demand, unto him the said* A. M. *the reasonable charges of taking, keeping, and selling the said distress being thereout first deducted. Given under our hands and seals the* ——— *day of* ——— *one thousand eight hundred and* ———.

Z a. Recognizance of Overseers of the Poor to prosecute a Master for ill-treatment of a Parish Apprentice.

Z a.

[32 G.3. c.57. § 11.—*Ante*, p. 172, 173.]

County of ——— } BE *it remembered, that on the* ——— *day of* ———, *in the* ——— *year of the reign of our sovereign lord* George *the fourth, of the United Kingdom of* Great Britain *and* Ireland, *king, defender of the faith,* O. P. *and* Q. P., *overseers of the poor of the parish of* ——— *in the said county,* [or O. P., *one of the overseers of the poor of the parish of* ——— as the case may be] *personally came before us,* J. P. *and* K. P. *esquires, two of his majesty's justices of the peace for the said county, and acknowledged themselves* [or, *himself*] *to owe to our said lord the king the sum of* ——— *each,* [or as the case may be,] *to be made and levied of their* [or, *his*] *goods and chattels, lands and tenements respectively, to the use of our said lord the king, his heirs and successors, if default shall be made in the condition following:*

Whereas A. P., *an apprentice by a parish indenture to* A. M. *of the parish of* W. *in the said county, yeoman, has charged on oath the said* A. M. *her master, before us the said justices, with ill-treatment, he the said* A. M. *having assaulted her the said* A. P. *twice within four months last passed, with intent to commit a rape on her body, namely, the said first assault being so made at the dwelling house of the said* A. M., *at* ——— *in the said parish of* W., *within three months last passed; and the said second assault being made on the morning of the* ——— *day of* ——— *last, in a field in the*

said parish of W., *for which said offence* [or, *offences*, as the case may be,] *we have discharged the said* A. P. *of and from her apprenticeship to the said* A. M.

Now the condition of this recognizance is such, that if the above bounden O. P. *and* Q. P. [or O. P. as the case may be,] *do and shall produce the said* A. P., *or other material evidence, and prosecute with effect the said* A. M. *for the said offence* [or, *offences*, as the case may be,] *by indictment at the next general quarter sessions of the peace* [or, *gaol delivery*, as the case may be,] *for the said county, according to the directions of an act passed in the thirty-second year of the reign of his late majesty king* George *the third, intituled* "An act for the further regulation of parish apprentices," *then this recognizance to be void, otherwise of force.*

Acknowledged before us, J. P.
K. P.

Z b.

Z b. Information against a Master for wilfully abandoning a Parish Apprentice, and removing above Forty Miles.

From *Y. C. P.* 56.

On stats. 56 G. 3. c. 139. § 8. — *ante*, p. 140, 141. and 3 G. 4. c. 23. § 2. *post*, tit. Conviction.

County of ——— } *THE information and complaint of* O. P., *overseer of the poor of the parish of* ——— *in the said county, made upon oath before me, one* [or, *us two*,] *of his majesty's justices of the peace in and for the said county, the* ——— *day of* ——— *in the year of our Lord one thousand eight hundred and* ———. *Who says that* A. P., *a poor child of the parish of* ——— *aforesaid, in the county aforesaid, was put apprentice by the churchwardens and overseers of the poor of the said parish of* ——— *by and with the consent of two of his majesty's justices of the peace in and for the said county, unto* A. M., *then of the said parish of* ——— *yeoman, and that the said* A. M. *afterwards removed into the parish of* W. *in the county aforesaid,* [or as the case may be,] *with the said* A. P., *his apprentice, and where he left her and wilfully abandoned her on the* ——— [the information must be exhibited within three calendar months next after the commission of the offence, 56 *G.* 3. *c.* 139. § 8.] *removing his residence more than* 40 *miles from the parish where the same was when the said* A. P. *was bound apprentice, as well as from the said parish of* W., [or as the case may be,] *where he so wilfully abandoned her, without giving a written notice thereof to the churchwardens and overseers of the poor of the parish, where the said apprentice then resided and was legally settled,* 14 *days previous to such removal, according to the directions of an act passed in the* 56*th year of the reign of King* George *the* 3*d, intituled* "An act to regulate the binding of parish apprentices," *whereby the said* A. M. *has forfeited the sum of* 10*l.*, *to be paid to the overseers of the poor of the said parish in which such offence has been committed: Whereupon the said* O. P. *prays the judgment of two of his majesty's justices of the peace for the said county of* ——— *in the premises, and that the said* A. M. *may be summoned to answer the premises accordingly.*

Before me, [or, *us.*]

Z c. Summons thereon.

Z c.

On stats. 56 G.3. c.139. § 8. *ante*, p. 140, 141. and 3 *G.* 4. c. 23. § 2. *post*, tit. Conviction.

County of } To (*a*) the constable of ———.
———

WHEREAS information and complaint upon oath have been made before me, [or, *us*, as the case may be, *see* 3 *G*.4. *c*.23. § 2.] *one* [or, *two*] *of his majesty's justices of the peace in and for the said county, by* O. P., *overseer of the poor of the parish of* ——— *in the said county, that* A. P., *a poor child of the parish of* ——— *aforesaid, in the county aforesaid, was put apprentice by the churchwardens and overseers of the poor of the said parish of* ———, *by and with the consent of two of his majesty's justices of the peace in and for the said county, unto* A. M., *then of the said parish of* ——— *yeoman; and that the said* A. M. *afterwards removed into the parish of* W. *in the county aforesaid,* [or as the case may be,] *with the said* A. P., *his apprentice, and where he left her and wilfully abandoned her on the* ——— *removing his residence more than forty miles from the parish where the same was when the said* A. P. *was bound apprentice, as well as from the said parish of* W., [or as the case may be,] *where he so wilfully abandoned her without giving a written notice thereof to the churchwardens and overseers of the poor of the parish, where the said apprentice then resided, and was legally settled, fourteen days previous to such removal, according to the directions of an act passed in the fifty-sixth year of the reign of king* George *the third, intituled* " An act to regulate the binding of parish apprentices," *whereby the said* A. M. *has forfeited the sum of ten pounds, to be paid to the overseers of the poor of the said parish in which such offence has been committed: These are therefore in his majesty's name to command you to summon the said* A. M. *to appear before me,* [if by one justice according to stat. 3 *G*.4. *c*.23. § 2. or *us*, as the case may be,] *and such other of his majesty's justices of the peace for the said county as shall be present at* ——— *in* ——— *in the said county on* ——— *the* ——— *day of* ——— *instant, at the hour of* ——— *in the forenoon, to answer unto the said information and complaint, and to be further dealt with according to law. Given under my hand and seal* [or, *our hands and seals*] *this* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———.

Z d. Warrant of Distress thereon.

Z d.

On stat. 56 *G*.3. *c*.139. § 8. *ante*, p. 140.

County of } To ——— (*b*) the constable of the parish of ———.
———

WHEREAS A. M. *late of the parish of* W., *in the said county, yeoman, is this day duly convicted before us,* J. P. *and* K. P. *esquires, two of his majesty's justices of the peace in and for the said county, upon the oath of* O. P., *overseer of the poor of the said parish of* ——— [or as the case may be,] *for that* A. P., *a*

(*a*) See p. 198. n. (*a*). (*b*) See p. 198. note (*a*).

poor child of the parish of ——— *aforesaid, in the county aforesaid, was put apprentice by the churchwardens and overseers of the poor of the said parish of* ———, *by and with the consent of two of his majesty's justices of the peace in and for the said county, unto the said* A. M. *then of the said parish of* ———, *yeoman, and that the said* A. M. *afterwards removed into the parish of* W., *in the county aforesaid,* [or as the case may be,] *with the said* A. P., *his apprentice, and where he left her and wilfully abandoned her on the* ——— [the information must be exhibited within three calendar months next after the commission of the offence, 56 *G.*3. *c.*139. § 8.] *removing his residence more than forty miles from the parish where the same was when the said* A. P. *was bound apprentice, as well as from the said parish of* W., [or as the case may be,] *where he so wilfully abandoned her, without giving a written notice thereof to the churchwardens and overseers of the poor of the parish, where the said apprentice then resided and was legally settled, fourteen days previous to such removal, according to the directions of an act passed in the fifty-sixth year of the reign of king* George *the third, intituled* "An act to regulate the binding of parish apprentices," *whereby the said* A. M. *hath forfeited the sum of* 10*l.*, *to be paid to the overseers of the poor of the said parish in which such offence has been committed: These are therefore to command you, in case no notice of appeal to any court or* general or quarter sessions to be holden for the said county, within three calendar months from the date of the said information and complaint, be given by the said* A. M. *to us the said justices, and also to the person or persons interested in such appeal, within twenty-one days from the date hereof, the said* A. M. *entering into a recognizance with two sufficient sureties, before some justice of the peace for the county or district within which the said conviction has taken place, to appear at such general or quarter sessions to abide the judgment of the court upon such appeal, and to pay the costs which may be awarded thereon, to levy the said sum of* 10*l. by distress and sale of the goods and chattels of the said* A. M.; *and if within the space of four days next after such distress by you taken, the said sum of* 10*l.*, *together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained as aforesaid, and out of the money arising by such sale, that you do pay the said sum of* 10*l. to the overseers of the poor of the said parish in which the said offence was committed, to be by them applied under our orders as the said act directs, returning the overplus (if any) on demand, unto him the said* A. M. *And if sufficient distress cannot be found of the goods and chattels of the said* A. M. *whereon to levy the said sum of* 10*l.*, *that then you do certify the same to us, together with the return of this precept. Given under our hands and seals at* ——— *in the said county, the* ——— *day of* ——— *in the year of our Lord one thousand eight hundred and* ———.

[N. B. For the CONVICTION, see the form (F.) as directed by the 56 *G.*3. *c.*139. § 15. *ante*, p. 142.]

Z e. Commitment when no Distress can be found. Z e.

On stats. 56 G.3. c.139. § 14.16. 3 G.4. c.23. § 2. — *ante*, p. 141, 142.

County of ——— } To the constable of ——— in the said county, and to the keeper of the house of correction [*or*, common gaol] at ——— in the said county.

WHEREAS A. M., *late of the parish of* ——— *in the said county, yeoman, was, on the* —— *of* ——— *last, duly convicted before* J. P. *and* K. P., *esquires*, [or, *us*, as the case may be,] *two of his majesty's justices of the peace in and for the said county, upon the oath of* O. P. *overseer of the poor of the said parish of* ——— [or as the case may be,] *for that* A. P. *a poor child of the parish of* ——— *aforesaid, in the county aforesaid, was put apprentice by the churchwardens and overseers of the poor of the said parish of* ——— *by and with the consent of two of his majesty's justices of the peace in and for the said county, unto the said* A. M., *then of the said parish of* ——— *yeoman, and that the said* A. M. *afterwards removed into the parish of* ——— *in the county aforesaid* [or as the case may be,] *with the said* A. P. *his apprentice. and where he left her and wilfully abandoned her on the* ——— [the information must be exhibited within three calendar months next after the commission of the offence, 56 G.3. c.139. § 8.] *removing his residence more than forty miles from the parish where the same was when the said* A. P. *was bound apprentice, as well as from the said parish of* W. [or as the case may be,] *where he so wilfully abandoned her, without giving a written notice thereof to the churchwardens and overseers of the poor of the parish, where the said apprentice then resided and was legally settled, fourteen days previous to such removal, according to the directions of an act passed in the fifty-sixth year of the reign of king* George *the third, intituled* " An act to regulate the binding of parish apprentices," *whereby the said* A. M. *has forfeited the sum of ten pounds, to be paid to the overseers of the poor of the said parish in which such offence has been committed. And whereas on the* —— *day of* ——— [here set the date of the foregoing warrant of distress in words at length,] *we*, [or, *the said justices*, as the case may be] *did issue our* [or, *their*, as the case may be,] *warrant to the constable of* ——— *to levy the said sum of ten pounds by distress and sale of goods and chattels of him the said* A. M., *and to pay the same according to the direction of the said statute; And whereas it duly appears unto us* J. P. *and* K. P. *esquires, two* [or *me* (*a*) J. P. *esquire one*, as the case may be,] *of his majesty's justices of the peace in and for the said county, as well upon the oath of the said constable of* ——— *as otherwise, that he the said constable of* ——— *has used his best endeavours to levy the said sum of ten pounds on the goods and chattels of the said* A. M. *as aforesaid, but that no sufficient distress can be found whereon to levy the same: These are therefore to require you, the constable of* ——— *aforesaid, to convey the said* A. M. *to the said house of correction* [or, *common goal*,] *of the said county of* ———, *and deliver him to the said keeper thereof, together with this precept. And you the said keeper are hereby commanded to receive into your cus-*

(*a*) One justice is made competent to *commit*, by stat. 3 *G*.4. *c*.23. § 2.

tody in the said house of correction [or, *common gaol*,] *him the said* A. M., *and there safely to keep him for the space of* [say not less than one, nor more than six months.] *And for your so doing this shall be your sufficient warrant. Given under our hands and seals,* [or, *my hand and seal,* as the case may be,] *at* ——— *in the said county, the* —— *day of* ——— *in the year of our Lord one thousand eight hundred and* ——.

Z f.

Z f. Recognizance on giving Notice of Appeal.

On stat. 56 *G.*3. *c.*139. § 17. *ante*, p. 142.

County of ———} *BE it remembered that on the* —— *day of* ——— *in the* —— *year of the reign of our sovereign lord* George *the fourth, of the United Kingdom of* Great Britain *and* Ireland, *king, defender of the faith,* A. M. *of* ——— *in the county aforesaid, yeoman, and* A. S. *of* ———, *weaver, and* B. S. *of* ———, *carpenter, personally came before me* J. P. *esquire, one of his majesty's justices of the peace for the said county, and acknowledged themselves to owe to our said lord the king, that is to say, the said* A. M., *the sum of* 20*l.*, *and the said* A. S. *and* B. S. *the sum of* 10*l. each, of good and lawful money of* Great Britain, *to be made and levied of their goods and chattels, lands and tenements respectively, to the use of our said sovereign lord the king, his heirs and successors, if the said* A. M. *shall make default in the condition following:—*

Whereas the above bounden A. M. *was on the* ——— *day of* ——— *instant, duly convicted before* J. P. *and* K. P., *esquires, two of his majesty's justices of the peace in and for the said county, upon the oath of* O. P., *overseer of the poor of the parish of* ——— *in the said county,* [or, as the case may be,] *for that* A. P., *a poor child of the parish of* ——— *in the county aforesaid, was put apprentice by the churchwardens and overseers of the poor of the said parish of* ———, *by and with the consent of two of his majesty's justices of the peace in and for the said county, unto the said* A. M. *then of the said parish of* ———, *and that the said* A. M. *afterwards removed into the said parish of* W. *with the said* A. P., *his apprentice, and where he left her and wilfully abandoned her on the* ———, *removing his residence more than forty miles from the parish where the same was when the said* A. P. *was bound apprentice, as well as from the said parish of* W., *where he so wilfully abandoned her without giving notice thereof to the churchwardens and overseers of the poor of the parish where the said apprentice then resided and was legally settled fourteen days previous to such removal: Now the condition of this recognizance is such, that if the above bound* A. M. *shall well and truly appear at the next general* [or *quarter*] *sessions of the peace to be holden in and for the said county, and then and there enter and prosecute an appeal against the said conviction, and abide the judgment of the court upon such appeal, and pay the costs which may be awarded thereon, and not depart without leave of the court, then this recognizance to be void.*

Acknowledged before me,
J. P.

AA. Complaint to One Justice, (see stat. 3 G. 4. c. 23. § 2. tit. **Conviction**) or totwo or more justices by a master or by his steward, manager, or agent, against an apprentice for ill behaviour: on stats. 20 G. 2. c. 19. § 3, 4. *ante* p. 172. 174., 4 G.4. c.29. § 1. *ante*, p. 172. and c.34. § 1. *ante* p. 177. (see *ante*, Form O.) **A A.**

County of } *THE complaint and information of* A. M. *of* ——
———— } *in the said county of* ——— *husbandman,* [or, if the complaint be made by the steward, manager, or agent of the master or mistress, then, *by* R. S. *of* ——— *in the said county, steward,* [*manager* or *agent,* as the case may be,] *of* A. M. *of* ——— *in the said county, the master* [or, *mistress*] *of* A. P. *an apprentice to the said* A. M.] *on oath* (a) *before me* ——— *one* [or, *us* ——— *and* ———, *two,* as the case may be,] *of his majesty's justices of the peace in and for the said county, the* ——— *day of* ———, *who saith, that* A. P., *apprentice by indenture to the said* A. M., *and upon whose binding out no larger sum than 25l. of lawful British money, to wit the sum of* —— *was paid or contracted to be paid,* [see 4 G. 4. c. 29. § 1. p. 172.] *hath in the service of his apprenticeship been guilty of several misdemeanors, miscarriages, and of much misconduct and ill behaviour towards him the said* A. M. *and particularly* [as the case shall be].

Before me, *J. P.* — A. M.
[or us, *J. P.* — [or R. S.
K. P. — as the case may be.]
as the case may be.]

BB. Warrant thereon. **BB.**

County of } To ——— (*b*) the constable of ———.
———— }

WHEREAS oath hath been made before me ——— *one* [or *us,* ——— *and* ———, *two,* as the case may be,] *of his majesty's justices of the peace in and for the said county, by* A. M. *of* ——— *in the said county, husbandman,* [or, if the complaint is made by the steward, manager, or agent of the master or mistress, then, *by* R. S. *of* ——— *in the said county, steward,* [*manager* or *agent,* as the case may be,] *of* A. M. *of* ——— *in the said county, the master* [or *mistress*] *of* A. P. *an apprentice by indenture to the said* A. M.] *that* A. P. *the said apprentice, upon whose binding out no larger sum than 25l. of lawful British money, to wit, the sum of* —— *was paid or contracted to be paid, hath committed divers misdemeanors against the said* A. M. *his master, and particu-*

(a) Before stat. 4 G. 4. c. 34. § 1. (*ante*, p. 177.) was passed to enable a steward or agent to complain on oath of the misbehaviour of the apprentice of their common master, it was held in *Finley* v. *Jowle*, (*ante*, p. 175.) that though the complaint must have then been by the master, yet the verification on oath might be by another person. In this case, *viz.* where neither the master nor his steward or agent, &c. make oath, but another person verifies the complaint on oath, the words "*on oath*" must be omitted; and afterwards, after the statement of facts, must be added, "*and which said complaint and information was verified before us by the oath of* A. W. *of* ———, *yeoman, on the day and year aforesaid, at* ——— *aforesaid, in the county aforesaid.*"

(*b*) See p. 198. note (*a*).

larly [as the case shall be],* [or, if the complaint is not made on oath of the master or mistress, or of the steward or agent, but is made by the master, verified by the oath of another person (see AA. note *a*), then as follows: *Whereas complaint hath been made,* (as above to the asterisk,) then add, "*and which said complaint has been verified*" *before us by the oath of* A. W. *of* ——— *yeoman*]: *These are therefore to require you forthwith to apprehend the said* A. P., *and bring him before, us to answer unto the said complaint, and to be dealt with according to law; And you are to give notice to the said* A. M. *that he appear before us at the same time, to make good the said complaint. Given under our hands and seals, &c.*

C C.

CC. Commitment thereon by Two Justices to the House of Correction.

County of ——— { To the constable of ——— in the said county, and to the keeper of the house of correction at ——— in the said county.

WHEREAS complaint hath been made before ——— *esquire, one* [or, *before us* ——— *and* ———, *two,* as the case was,] *of his majesty's justices of the peace in and for the said county, upon the oath of* A. M. *of* ——— *in the said county, husbandman,* [or, if the complaint is made by the steward, manager, or agent of the master or mistress, then, *by* R. S. *of* ——— *in the said county steward,* [*manager, or agent,* as the case may be,] *of* A. M. *of* ——— *in the said county, the master* [*or, mistress*] *of* A. P. *an apprentice to the said* A. M.] *that* A. P. *an apprentice by indenture to the said* A. M., *and upon whose binding out no larger sum than* 25*l.* *of lawful British money, to wit the sum of* ——— *was paid, or contracted to be paid, hath committed divers misdemeanors against the said* A. M. *his master, and particularly* [as the case shall be],* [or, if the complaint is not made on oath of the master or mistress, or of the steward or agent, but is made by the master, verified by the oath of another person (see AA. note *a*), then as follows: *Whereas complaint hath been made,* (as above to the asterisk) then add "*and which said complaint has been verified before us by the oath of* A. W. *of* ——— *yeoman.*"]

And whereas upon examination thereof, and upon hearing the allegations of both parties, they having come before us [if the original complaint was sworn before one justice only here add ——— *and* ———,] *two of his majesty's justices of the peace for the said county of* ——— *for that purpose, and upon due consideration had thereof, it manifestly appears to us and we do adjudge that he the said* A. P. *is guilty of the premises so charged against him as aforesaid: We do therefore hereby command you the said constable to take and convey the said* A. P. *to the said house of correction, and to deliver him to the said keeper thereof, together with this warrant: And we do hereby command you the said keeper of the said house of correction, to receive the said* A. P. *into your custody in the said house of correction, there to remain and be corrected, and held to hard labour for the space of* [not exceeding one calendar month]. *Given under our hands and seals, the* ——— *day, &c.*

D D. Discharge of an Apprentice by Two Justices on complaint of the Master; by stat. 20 *G.2. c.*19. § 4. (*ante*, p. 174.) — D D.

County of ——— } *WHEREAS complaint*, &c. [as in the last precedent] ——— *We do therefore by these presents discharge the said* A. P. *from his apprenticeship to the said* A. M.; *any thing in any indenture or indentures of apprenticeship betwixt them, or otherwise, to the contrary notwithstanding. Given*, &c.

E E. Form of the Order of Two Justices, directing a Parish Apprentice to continue with the Widow (or as the case may be) of his deceased Master; by stat. 32 *G.*3. *c.*57. § 2. (*ante*, p. 180.) — E E.

County of ——— } *WHEREAS* F. M. *within named, late of the parish of* ——— *in the said county, died on the* ——— *day of* ——— *being within three calendar months now last past, we, two of his majesty's justices of the peace for the county aforesaid, whose names are hereunto subscribed, on the application and at the request of* A. M. *widow* [or as the case may be] *of the said* F. M. *living with and being part of the family of the said* F. M. *at the time of his death, do hereby order and direct, that* A. P. *the apprentice within named, who was in the service and actual employment of the said* F. M. *at the time of his death, shall serve the said* A. M. *as such apprentice for the residue of the term of such apprenticeship within mentioned, according to the provisions of an act passed in the thirty-second year of the reign of king* George *the third, intituled* "An act for the further regulation of parish apprentices." *Witness our hands this* ——— *day of* ———.

I, the abovenamed A. M. *do hereby declare, that the above order is made at my request, and that I do accept the said* A. P. *as my apprentice, according to the terms and covenants contained in the said indenture, and according to the provisions of the said act. Witness my hand, the day and year above written.*

F F. Form of the like Order, by a separate Instrument.

County of ——— } *WHEREAS it appears unto us, two of his majesty's justices of the peace for the said county, that* A. P. [the apprentice] *was bound an apprentice, by the churchwardens and overseers of the poor of the parish of* ——— *to* F. M. [the master] *late of the said parish,* ——— *and that the said* F. M. *died on the* ——— *day of* ———, *being within three calendar months now last past: Now we, the said two justices, on the application and at the request*, &c. [then to the end, as before, *mutatis mutandis.*]

G G. Master's Oath to claim his Apprentice, on stat. 6 *G.*3. *c.* 25. § 3. p. 176. — G G.

From Toone's M. M. p. 59.

County of ——— } *I* A. B. *of* ———, *in the county of* ———, *do make oath that I am by trade a* ———, *and that* C. D. *was bound to serve as an apprentice to me in the said trade, by indenture bearing date the* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———, *for*

the term of ——— *years, and that the said* C. D. *did, on the* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———, *abscond and quit my service without my consent, and that to the best of my knowledge and belief the said* C. D. *is aged about* ——— *years. Witness my hand, the* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———.

Sworn before me, at ——— *in the* ——— *of* ———, *this* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ——— .

S. P.

One of his majesty's justices of the peace for the ——— *of* ———.

Approver.

AN *approver* (probator) is a person *indicted* of treason or felony, and *in prison* for the same, who upon his arraignment, before any plea pleaded, doth confess the indictment, and takes a corporal oath to reveal all treasons and felonies that he knoweth of, and therefore prays a coroner, before whom he is to enter his appeal or accusation against those that are partners in the crime contained in the indictment. 3 *Inst.* 129.

This accusation of himself, and oath, makes his accusation of another person of the same crime to amount to an indictment; and if his partners are convicted, he shall have his pardon of course. 3 *Inst.* 129, 130.

But justices of the peace cannot take cognizance hereof, because they have no authority by their commission to assign a coroner. 3 *Inst.* 130.

And besides, as it is in the discretion of the court, whether they will suffer one to be an approver, this method of late hath been seldom practised: And in many cases we have what seems to amount to the same, by statute; where pardon is assured to offenders, on discovering and convicting their accomplices. 4 *Bla. Com.* 330. stats. 4 & 5 *W.*3. *c.*8. 6 & 7 *W.*3. *c.*17. 10 & 11 *W.*3. *c.*23. § 5. 5 *Ann. c.*31. § 4. 29 *G.*2. *c.*30.

Accomplices competent witnesses.

Great inconvenience arose out of the practice of approvement; and there is no doubt, if it were not absolutely necessary for the execution of the law against notorious offenders, that accomplices should be received as witnesses, the practice is liable to many objections. And though, under this practice, accomplices are clearly competent witnesses, their single testimony alone is seldom of sufficient weight with a jury to convict the offender; it being so strong a temptation to a man to commit perjury, if by accusing another, he can escape himself. Let us see, then, what has come into the room of this practice of approvement: it is a kind of *hope*, that accomplices who behave fairly and disclose the whole truth, and bring others to justice, should themselves escape punishment, and be pardoned. This is in the nature of a recommendation to mercy.

Justices have no authority to pardon an accomplice, and

But no authority is given to a justice of the peace to pardon an offender, and to tell him that he shall be a witness against others. The accomplice is not assured of his pardon; but gives his evidence *in vinculis*, in custody: and it depends on the title he has

from his behaviour, whether he shall be pardoned or executed. A justice has no authority to select whom he pleases to pardon or prosecute; and the prosecutor himself has even a less power, or rather pretence, to select than the justice of peace. It rests, therefore, on *usage* and on the offender's own good behaviour, whether he shall be prosecuted or not. *Per Ld. Mansfield* C. J. *Mrs. Rudd's case*, 1 *Leach*, 120. 1 *Cowp.* 336.

tell him that he shall be a witness against others.

Nor to select whom to pardon or prosecute.

In cases not within any statute, an accomplice who fully and truly discloses the joint guilt of himself and of his companions, and truly answers all questions that are put to him, and is admitted by justices of the peace as a witness against his companions, and who, when called upon, does give evidence accordingly, and appears, under all the circumstances of the case, to have acted a fair and ingenuous part, and to have made a full and true information, ought not to be prosecuted for his own guilt so disclosed by him, nor perhaps for any other offence of the same kind, which he may accidentally, and without any bad design, have omitted in his confession; but he cannot by law plead this in bar to any indictment against him, nor avail himself of it, upon his trial; for *it is merely an equitable claim to the mercy of the crown*, from the magistrates' express or implied promise of an indemnity, upon certain conditions that have been performed; it can only come before the court by way of application to put off the trial, in order to give the prisoner time to apply elsewhere. *Per Aston* J., in delivering the opinion of the judges in *Mrs. Rudd's case, O. B., Dec. Sess.* 1775. 1 *Leach*, 123. All the circumstances relative to a prisoner's claim of indemnity in such a case, not only may, but ought to be laid before the court, to enable them to exercise their discretion, whether, upon the grounds before them, the trial should be put off, and consequently have intimation given that the prisoner ought not to be prosecuted; for the discretionary power exercised by justices of the peace in admitting accomplices to be witnesses, founded in practice only, cannot control the authority of the court of gaol delivery, and exempt at all events the accomplice from being prosecuted. *So held by nine of the judges, S. C.*

Mr. Justice *Blackstone* says, that an accomplice who has been admitted as a witness against his fellows "*shall not afterwards be prosecuted for that or any other previous offence of the same degree.*" 4 *Bla. Com.* 331. Mrs. *Rudd's* case does not, however, warrant this position; and Mr. *Christian* is of opinion, that an accomplice has no claim to mercy beyond the offences in which he has been connected with the prisoners, and concerning which he has previously undergone an examination. 4 *Bla. Com.* 331. (*notis*) *edit.* 1809. And so it appears to be settled in the following cases:

George Duce, a prisoner in *Nottingham* gaol for felony, was admitted king's evidence against *Richard Barber*, tried at the *Lent Assizes*, 1801, for the town of *Nottingham*, before *Graham* B., for receiving stolen goods from a bleaching ground; and on his evidence fully and satisfactorily given, *Barber* was convicted. *Duce* was, of course, discharged from the gaol at *Nottingham*; but being under a charge of horse-stealing at *Derby*, he was sent to the gaol of that county, and afterwards tried before the same learned judge for that offence; was convicted and received sentence of death, with respite for transportation. But a doubt arising whether his case did not fall within that equitable claim to mercy which is

Giving evidence for the crown as king's evidence, does not entitle a person to a pardon in respect of undiscovered offences.

usually indulged to accomplices becoming witnesses for the crown, the question was submitted to the judges, who were unanimously of opinion, that the pardon was not to extend to offences for which the party might be liable to prosecution out of the county, and the prisoner underwent his sentence. *Duce's case, Nott. & Derby Lent Ass.* 1801, *cor. Graham* B., *MS. C. C. R.*

So also at *Northampton Lent Assizes*, 1818, *Thomas Lee*, an accomplice, was, upon application by the counsel for the crown, taken before the grand jury, and examined as a witness on the trial of *William Franklin* and *Abraham Cook* for a highway robbery, and conducted himself with propriety, and told the truth. On a subsequent day, the said *Thomas Lee* was tried and convicted of burglary. *Garrow* B. submitted to the judges, Whether it were proper to prosecute him after he had been received as a witness for the crown. The judges held, that there was no legal objection to the prosecution, nor any general rule upon the subject; and the prisoner has been transported for life. *Thomas Lee's case, Northampton Lent Ass.* 1818, *cor. Garrow* B., *MS. C. C. R.*

And in a still more recent case, at *Thetford Lent Ass.* 1821, *Thomas Brunton* was admitted king's evidence on an indictment for burglary, but his account being in some parts almost incredible, and differing in others from what he had stated before the magistrate; *Graham* B. thought him unworthy of credit, and directed an acquittal. *Brunton* was afterwards tried for sheep-stealing and convicted. On case, the judges thought the conviction right. *Rex* v. *Brunton*, *E. T.* 1821. *MS. C. C. R.* Vide 1 *Phill. Ev.* 37. *sixth edit.*

Arbitration. See **Award.**

Armorial Bearings. See *post*, title **Taxes.**

Arrack. See **Excise.**

Arraignment.

WHEN an offender comes into court, or is brought in by process, sometimes of *capias*, and sometimes of *habeas corpus*, directed to the gaoler of another prison, the first thing that follows thereupon is his arraignment. 2 *Hale*, 216.

Now arraignment is nothing else but calling the offender to the bar of the court, to answer the matter charged upon him. 2 *Hale*, 216.

The prisoner on his arraignment, though under an indictment of the highest crime, must be brought to the bar without irons and all manner of shackles and bonds, unless there be a danger of escape, and then he may be brought with irons. 2 *Hale*, 219. 4 *Bla. Com.* 323. 2 *Haw. c.*28. § 1.

But *note*, at this day they usually come with their shackles upon their legs, for fear of an escape, but stand at the bar unbound, till they receive judgment. 2 *Hale*, 219.

In *Layer*'s case, a difference was taken between the time of *arraignment* and the time of *trial*, and accordingly the prisoner was obliged to stand in irons at the bar during his *arraignment*;

but when brought to trial, upon counsel desiring that his irons might be taken off, Ld. C. J. *Pratt* said, " The irons must be taken off; we will not stir till the irons are taken off." *Layer's case, K. B.* 9 *G.* 1. 16 *Howel's St. Tri.* 94. 99. 129. See all the authorities upon this subject collected in a note to the trials of the *regicides.* 5 *Howel's St. Tri.* 979.

In *Rex* v. *Waite* (for embezzlement), the prisoner, at the time of *arraignment,* desired that his irons might be taken off; but the court informed him that they had no authority for that purpose until the jury were charged to try him. He accordingly pleaded *Not Guilty;* and being put upon his trial, the Court (*a*) immediately ordered his fetters to be knocked off. *Waite's case, O. B. Feb. Sess.* 1743. 1 *Leach,* 28. 36. 2 *East's P. C.* 570. *S. C.*

(*a*) Carter J. & Dennison J.

Also, there is no necessity that a prisoner, at the time of his arraignment, hold up his hand at the bar, or be commanded so to do; for this is only a ceremony for making known the person of the offender to the court; and if he answer that he is the same person, it is all one. 2 *Haw. c.*28. § 2. *Rex* v. *Radcliffe,* 1 *Blac. Rep.* 3. *Fost.* 40. *S. C.* 4 *Bla. Com.* 323. *T. Raym.* 408.

For other matters relating to this subject, see title **Sessions.**

Arrest.

THIS title is to be understood of arrests in criminal cases only, and not in civil cases.

It may, however, be observed here, that by stat. 51 *G.*3. *c.*124. the power of arresting in civil cases was confined to those in which 15*l.* at least was the original amount of the debt, exclusive of the costs of suing and recovering the same; excepting in cases of promissory notes and bills of exchange: in which cases the parties liable thereon might be held to special bail as if the act had not been made. (*i. e.* for 10*l.* see stats. 12 *G.*1. *c.* 29. § 1. 19 *G.* 3. *c.* 70. § 1.) But the stat. 51 *G.* 3. *c.* 124. which was a temporary act, continued by stat. 57 *G.* 3. *c.* 101. § 1. to the end of the session next after 1st of *Nov.* 1823, having received no further continuation in the last session, is now expired, and it seems that arrests may now be made for debts amounting to 10*l.*, except the party is a petty officer, seaman, marine, or soldier, within the annual mutiny acts, or is sued in *Wales* or a county palatine on process out of the courts at *Westminster.* See *Tyrwh. & Tynd. Digest of the Statutes,* p. viii. & p. 34. *pl.* 18, 19.

51 G.3. c.124.

In law, an arrest doth signify the restraint of a man's person, depriving him of his own will and liberty, and binding him to become obedient to the will of the law; and it may be called the beginning of imprisonment. *Lamb.* 95.

Concerning which I will show,

I. *Who may or may not be arrested.*
[50 Ed.3. c.5.—1 R.2. c.15.—29 C.2. c.7. § 6.]

II. *For what Causes of Suspicion an Arrest may be.*
[34 Ed.3. c.1.—5 G.4. c.83.]

III. *By whom an Arrest shall be made.*
[5G.4. c.18. c.83.]

IV. *The manner of an Arrest.*
[29 C.2. c.7.—24 G.2. c.55.—27 G.2. c.20.]

V. *What is to be done after the Arrest.*
[23 H.6. c.9.—24 G.2. c.44.]

I. Who may or may not be arrested.

Privilege of parliament.

Generally, a member of parliament shall have the privilege of parliament for himself and his servants to be freed from arrests: but for treason, felony, and breach of the peace, there can be no privilege. 4 *Inst.* 24. 25. 1 *Black. Com.* 145.

Bodies corporate.

Bodies corporate, acting in a way that would render an individual liable to arrest, cease to retain, of course, their corporate character, and become individually responsible.

Persons charged in execution.

In the case of *Rex* v. *Woodham*, 2 *Str.* 828. upon a motion for an information against the defendant, who was a justice of the peace, it was holden that a person in execution in the K. B. may be there charged criminally by a justice of the peace's warrant; but that no such justice can take a prisoner of this court out of the custody of the court, and send him to the county gaol.

Clergy in churches, churchyards, &c.

By statutes 50 *Ed.*3. *c.*5. and 1 *Rich.*2. *c.*15. None shall arrest priests or their clerks, or other persons of holy church, whilst they attend to divine service, in churches, churchyards, or other places dedicated to God; on pain of imprisonment and ransom at the king's will, and he shall also make gree (satisfaction) to the parties arrested.

29 C.2. c.7. On Sundays.

Also by stat. 29 *C.*2. *c.*7. § 6. A warrant executed against any person whatsoever, on the Lord's day, is void: and the persons serving the same shall answer damages, as if they had done the same without warrant; except in cases of treason, felony, or breach of the peace,

II. For what Causes of Suspicion an Arrest may be.

Suspicion.

By the statute of 34 *Ed.*3. *c.*1. Power is given to the justices of the peace, to arrest all those whom they find by indictment, or by *suspicion*, and to put them in prison.

Causes of suspicion.

The causes of suspicion, which are generally agreed to justify the arrest of an innocent person for *felony*, are these that follow:

Common fame.

(1) The common fame of the country: but it seems, that it ought to appear upon evidence, in an action brought for such arrest, that such fame had some probable ground. 2 *Haw.* *c.*12. § 9.

Circumstances of guilt.

(2) Being found in such circumstances as induce a strong presumption of guilt; as coming out of a house wherein murder has been committed, with a bloody knife in one's hand; or being found in possession of any part of goods stolen, without being able to give a probable account of coming honestly by them. *Ib.* § 12.

Flight.

(3) The behaving one's self in such a manner as betrays a consciousness of guilt; as where a man accused of felony, on hearing that a warrant is taken out against him, doth abscond. *Ib.* § 13.

But the party who flies from an arrest for a capital offence, is not thereby guilty of a capital offence, but only liable to forfeit his goods, when such flight is found against him by the coroner's inquest. 2 *Haw. c.*17. § 13.

Evil company.

(4) The being found in company with one known to be an offender, at the time of the offence, or generally at other times keeping company with persons of scandalous reputation. 2 *Haw. c.*12. § 11. 2 *Inst.* 52.

Living idle.

(5) The living an idle, vagrant, and disorderly life, without having any visible means to support it. 2 *Haw. c.*12. § 10.

A woman walking up and down the streets to pick up men, a night walker, may be apprehended. *Per Lawrence* J. *Lawrence* v. *Hedger*, 3 *Taunt.* 15. See stat. 5 *G.*4. *c.* 83. § 3. & 6. *post*, Vol. V. tit. Vagrant, and *post*, p. 217.

Hue and cry.

(6) The being pursued by hue and cry. 2 *Haw. c.*12. § 14.

For if a felony is done, and one is pursued upon hue and cry, that is not of ill fame, suspicious, unknown, nor indicted, he may be attached and imprisoned by the law of the land. 2 *Inst.*52.

Where no crime is committed.

(7) But generally, no such cause of suspicion as any of the above mentioned, will justify an arrest, where in truth no such crime hath been committed; unless it be in the case of hue and cry. 2 *Haw. c.*12. § 16.

Difference between arrest by a peace officer and by a private person.

(8) In the case of *Samuel* v. *Payne and others*, *Doug.*359. it was determined that a peace officer may justify an arrest on a reasonable charge of felony, without a warrant, although it should afterwards appear that no felony had been committed: but that a private individual in such a case cannot.

It is lawful for a private person to do any thing to prevent the perpetration of a felony. Therefore, in a case where the defendants broke and entered the plaintiff's house to prevent him from murdering his wife, the court of C. P. held that they were justified. *Per Chambre* J., *Handcock* v. *Baker and others*, 2 *Bos. & Pull.* 260.

A constable may justify an arrest on *probable* ground that a felony has been committed, although no *positive charge* be made.

Ledwith v. *Catchpole*, *E.* 23 *G.*3. *Cald.*291. This was an action of trespass and false imprisonment tried before Lord *Mansfield* at *Guildhall.* The defendant was one of the marshalmen of the lord mayor of *London.* The jury found a verdict for the plaintiff with 20*l.* damages. Upon motion for a new trial, Lord *Mansfield* reported the evidence to have been; That one *Smith*, who had lost some linens to a large amount, brought one *Stevens* to the defendant, who said, that one *Maddox* had called a coach, and put *Smith's* bale of goods into it at a public house; that the plaintiff put his head into the coach; that afterwards the coach stopped at another house, and that the plaintiff met it there; that *Smith* suspecting the plaintiff to have been concerned in the theft, from the circumstance of his having been twice so seen at the coach, took the defendant on a *Sunday* to the plaintiff for the purpose of having him apprehended; that when they came to him, neither *Smith* nor any other person charged the plaintiff with a felony; that *Smith* said, "I have lost some cloth; but I don't say that it was he who stole it; I know nothing of that, but stolen it was." The defendant, being asked by the plaintiff what authority he had to arrest him, produced a hanger, and said, "That was his authority:" That he then did arrest the plaintiff, and took him to the *Poultry* Compter; from whence he was taken

the next day before the sitting alderman, and discharged. — *Buller* J. I think, if we were to say that a constable is justifiable in this case, we should go the length of saying that he is to some purposes a judicial officer, which is going further than has ever yet been adjudged. It would be to allow a constable to examine witnesses, act upon their testimony, though he cannot administer an oath, and judicially to conclude whether there is or is not a reasonable ground of suspicion, and this might be attended with danger. Where a positive charge is made, the party making it is obliged to follow it up with a prosecution, or is himself liable to an action. In such case the constable is merely ministerial, and bound to take the party up, and carry him before a magistrate. The magistrate must then examine into the matter upon oath, which the constable cannot do. — *Willes* J. A felony is committed. The prisoner looked into the coach where the stolen goods were deposited at the time, and afterwards met the coach, where it stopt. Then, called upon as the constable was to act, and under such strong circumstances of suspicion, I think it became his duty to act, and that there ought to be a new trial.— Lord *Mansfield*. The question is, whether a felony has been committed or not? And then the fundamental distinction is, that if a felony has actually been committed, a private person may, as well as a peace officer, arrest; if not, the question always turns upon this, Was the arrest *boná fide*? was the act done fairly and in pursuit of an offender, or by design, or malice and ill-will? Upon a highway robbery being committed, an alarm spread, and particulars circulated, and in the case of crimes still more serious, upon notice given to all the sea-ports, it would be a terrible thing, if under probable cause an arrest could not be made; and felons are usually taken up on descriptions in advertisements. Many an innocent man has been and may be taken up upon suspicion: but the mischief and inconvenience to the public in this point of view are comparatively nothing. It is of great consequence to the police of the country. I think there should be a new trial. *Per* Lord *Mansfield* and *Willes* J. — Rule absolute. — The new trial came on at the sittings after E. T. 23 *G.*3., when a verdict was found for the defendant.

A constable is not a judicial officer.

Arrest without warrant, how far justified by suspicion.

Guppy v. *Brittlebank* & *Potter*, *E.* 58 *G.*3. 5 *Price*, 525. It appears that an arrest may be made without warrant, if there be sufficient matter of presumption of the party's guilt, and those circumstances may be pleaded in justification; as where a person of character paid away a forged note in the purchase of a horse at a fair, and on searching, another was found on him; at all events the Exchequer held the arrest so far justified by the circumstances, that they ought not to disturb a verdict found for the defendant.

Where the officer, in the execution of *mesne process*, had gained peaceable admission at the outer door, the court held that he was warranted in gaining admission to the chamber in

Lloyd v. *Sandilands*, *E.* 58 *G.*3. 8 *Taunt.* 250. 2 *Moore*, *C. P.* 207. *S. C.* A rule *nisi* had been obtained to discharge the defendant out of the custody of the sheriff of *Middlesex*, upon his *affidavit*, which stated, that he was arrested on the 4th of *April* in his bedroom, at the house of a friend, with whom he had for some time resided. That the officer, to effect his arrest, got on a shed in the garden, and broke a window, and having entered through the aperture, showed the defendant his warrant, and took him to a lock-up house: that the officer rushed through the house into the garden, when the outer door was first opened in the morning, and then got upon the shed and made the arrest as before stated,

and that he believed that these proceedings took place without the knowledge of his friend. After argument against and in support of the rule, *per Dallas* C. J. — The officer and his assistants have sworn that the outer door of the house was open at the time of their admittance; this case then must be governed by *Lee* v. *Gansell* (1 *Cowp.* 1. Vol. II. *tit.* House), where it was held, that a bailiff in execution of *mesne process* may break open the door of a lodger's apartment, having first gained peaceable entrance at the outer door of the house. I cannot distinguish between breaking open the inner door of a house, and breaking open a window after the outer door is open. The principle, that every man's house is his castle, depends on this, that if the outer door be broken, it lays the house open to the invasion of all sorts of persons, but where the inner door is broken that is not the case. *Burrough* J. — I hold it to be clear law, that when the outer door is open, the bailiff may enter forcibly, either through an inner door or a window. If it were otherwise, it would only be necessary for a person to frame one room with iron or stone, or other material that would resist all external force, and then all process of the law would be set at defiance. R. D.

which the party was, by breaking through an outer back window; the chamber-door at which he first applied being firmly secured, and having told the defendant he had process to serve on him.

Where outer door is open, a bailiff may enter forcibly through an inner door, or a window.

It appears that an arrest of a party on civil process by the initials only of his christian name is irregular. *Reynolds* v. *Hankin*, *E.* 2 *G.*4. 4 *B.* & *A.* 536.

Arrest by initials of christian name.

If a peace officer *of his own head* takes a person into custody *on suspicion*, he must prove that there was such a crime *committed;* but if he receives a person into custody, on a charge, preferred by another, of felony or breach of the peace, there he is to be considered a mere conduit, and if no felony or breach of the peace was committed, *the person who preferred the charge alone is answerable.* So ruled, per *Buller* J. *at N. P. in* 1788. *Williams* v. *Dawson*, *S. P.* *Per* Lord *Ellenborough* C. J. *Hobbs Gent. one*, *&c.* v. *Branscomb*, *Drinkwater*, *and others.* *Sittings after T. T.* 53 *G.*3. 3 *Campb.* 420.

Peace officer arresting of his own head, or receiving into custody on charge by another.

Oxley v. *Flower and another*, *sheriffs of Middlesex.* *Sittings after M. T.* 40 *G.*3. *MS.* This was an action of trespass and false imprisonment. It appeared that the defendant's officer, having a writ against one Mrs. *Catherington*, apprehended the plaintiff by mistake for her, she permitting herself to be arrested without undeceiving the officer, and even contributing to his mistake. The verdict was for the plaintiff, and the defendant applied to the court to certify against the plaintiff's costs, under the statute 43 *Eliz.* *c.*6. § 2. But Lord *Kenyon* C. J. observed, that there was an exception as to any action brought for any title or inheritance of lands, or for any *battery*, and expressed his opinion that this action came under the latter signification, and said that he was therefore precluded from certifying.

Arrest of a wrong person by mistake.

III. By whom the Arrest shall be made.

In criminal cases, a person may be apprehended and restrained of his liberty, not only by process out of some court, or warrant from a magistrate, but frequently by a constable, watchman, or private person, without any warrant or precept.

Arrest *without* warrant.

If a justice see a felony, or other breach of the peace, committed in his presence, he may in his own person apprehend the offender. And he may also, by word of mouth, command any

By a justice of the peace.

one to arrest another who shall be guilty of any felony, or actual breach of the peace, in his presence, and such command is a good warrant without writing. 2 *Hale*, 86.

By private persons.

And all persons who are present when a felony is committed, or a dangerous wound given, are bound to apprehend the offender, on pain of being fined and imprisoned for their neglect, unless they were under age at the time. 2 *Haw.* c.12. § 1.

Also every private person is bound to assist an officer demanding his help, for the taking of a felon, or the suppressing of an affray. *Ib.* § 7.

5 G.4. c.83.

Also by the vagrant act 5 *G.4. c.*83. § 6. Any person whatever may apprehend persons offending against that act. See Vol. V. tit. Vagrants.

By watchmen.

Also a watchman may arrest a night-walker, by a warrant in law. 2 *Inst.* 52. and see 5 *G.4. c.*83. § 3. Vol. V. tit. Vagrant.

Watchmen and beadles have authority at common law to arrest and detain in prison, for examination, persons walking in the streets at night whom there is reasonable ground to suspect of felony, although there is no proof of a felony having been committed. *Lawrence* v. *Hedger*, *T.* 50 *G.3. C.P.* 3 *Taunt.* 14. and see 22 *G.3. c.*58. § 3. *ante*, p. 16, 17.

In 2 *Burr.* 164., *Rex* v. *Bootie*, is an indictment against a constable for suffering a street-walker, taken up by a watchman, to escape.

By constables.

In like manner, a constable may *ex officio* arrest a breaker of the peace in his view, and keep him in his house, or in the stocks, till he can bring him before a justice. 1 *Hale*, 587.

By others in cases of affray.

Or any person whatsoever, if an affray be made to the breach of the king's peace, may without any warrant from a magistrate restrain any of the offenders, to the end the king's peace may be kept: but after the affray is ended, they cannot be arrested without an express warrant. 2 *Inst.* 52.

It seems that any one may lawfully lay hold of another, whom he shall see upon the point of committing treason or felony, or doing any act which would manifestly endanger another's life; and may detain him till it may be reasonably presumed that he hath changed his purpose. 2 *Haw.* c.12. § 19.

Arrest *with* warrant.

So much concerning an arrest without a warrant: next follows arresting with such warrant.

By the sheriff or constable.

The warrant is ordinarily directed to the sheriff or constable, and they are indictable, and subject thereupon to a fine and imprisonment, if they neglect or refuse it. 1 *Hale*, 581.

Sheriff may depute.

If it be directed to the sheriff, he may command his bailiff, under-sheriff, or other sworn and known officer, to serve it, without writing any precept. But if he will command another man that is no such officer to serve it, he must give him a written precept, otherwise an action of false imprisonment will lie. *Lamb.* 89.

But every other person to whom it is directed must personally execute it; yet it seems, that any one may lawfully assist him. 2 *Haw.* c.14. § 29.

Whether a constable may execute it out of his own district.

If a warrant be generally directed to all constables, no one can execute it out of his own precinct; for in such case it shall be taken respectively to each of them within their several districts, and not to one of them to execute it within the district of another: but if it be directed to a particular constable (Mr. *Hawkins* says, to a particular constable *by name*), he may execute

it any where within the jurisdiction of the justice, but is not compellable to execute it out of his own constablewick. 1 *Lord Raym.* 546. 1 *Hale,* 581. 2 *Hale,* 110. 2 *Haw.* c. 13. § 30. 1 *Salk.* 176.

And in *Rex* v. *Weir and others,* H. 1823. 1 *B. & Cr.* 288., a warrant of distress for a poor-rate directed *to the constables of Woolwich,* without naming them as individuals, was held not legally executed by them out of their jurisdiction, *viz.* in *St. Paul's, Deptford.*

5 G.4. c.18. Constables may execute warrants out of their precincts, provided it be within the jurisdiction of the justice granting or backing the same.

But now by stat. 5 *G.*4. *c.*18. § 6. reciting that whereas warrants addressed to constables, headboroughs, tithingmen, borsholders, or other peace officers of parishes, townships, hamlets, or places, in their characters of and as constables, headboroughs, tithingmen, borsholders, or other peace officers of such respective parishes, townships, hamlets, or places, cannot be lawfully executed by them out of the precincts thereof respectively, whereby means are afforded to criminals and others of escaping from justice: for remedy thereof, it is Enacted, "that it shall be lawful to and for each and every constable, and to and for each and every headborough, tithingman, borsholder, or other peace officer, for every parish, township, hamlet, or place, to execute any warrant or warrants of any justice or justices of the peace, or of any magistrate or magistrates, within any parish, township, hamlet, or place, situate, ly ng, or being within that jurisdiction for which such justice or justices, magistrate or magistrates, shall have acted when granting such warrant or warrants, or when backing or indorsing any such warrant or warrants, in such and the like manner as if such warrant or warrants had been addressed to such constable, headborough, tithingman, borsholder, or other peace officer, specially by his name or names, and notwithstanding the parish, township, hamlet, or place in which such warrant or warrants shall be executed, shall not be the parish, township, hamlet, or place for which he shall be constable, headborough, tithingman, or borsholder, or other peace officer, provided that the same be within the jurisdiction of the justice cr justices, magistrate or magistrates, so granting such warrant or warrants, or within the jurisdiction of the justice or justices, magistrate or magistrates, by whom any such warrant or warrants shall be backed or indorsed." [§ 5. This act does not extend to *Scotland.*]

Extent of act.

Any person may execute it.

The justice that issues the warrant may direct it to a private person if he please, and it is good; but he is not compellable to execute it, unless he be a proper officer. 1 *Hale,* 581.

But not to be directed to the party.

But by the justice's oath of office the warrant ought not to be directed to the party, but to some indifferent person, to execute it.

Where directed to two jointly.

If a warrant be directed to two or more jointly, yet any one of them alone may execute it. *Dalt. c.*169.

IV. The Manner of an Arrest.

To be gone about immediately.

The officer to whom a warrant is directed and delivered, ought with all speed and secrecy to find out the party, and then to execute the warrant. *Dalt. c.*.169. p. 404.

Opposing the execution.

It is certainly an offence of a very high nature to oppose one who lawfully endeavours to arrest another for *treason* or *felony;* and it seems that a person who so opposes an arrest for treason, whereof he knows the party to have been guilty, is thereby guilty

of the treason; and that he, who so opposes an arrest for felony, is an accessary to the felony. 1 *Haw. c.* 17. § 1.

Arresting in the night.

An arrest in the night is good, both at the suit of the king and of the subject; else the party may escape. 9 *Rep.* 66.

Or on Sunday. 29 C. 2. c. 27.

So by stat. 29 *C.* 2. *c.* 7. § 6. An arrest for treason, felony, or breach of the peace may be made on Sunday. See Vol. III. tit. Lord's Day.

24 G. 2. c. 55. Arresting in another county.

By stat. 24 *G.* 2. *c.* 55. Constables and others may, on having the warrant indorsed by a justice in another county, into which an offender shall have escaped, which the justices shall do, on proof, on oath, of the hand-writing of the first justice who signed the warrant, arrest an offender in such other county, and carry him before the justice who indorsed the warrant, or some other justice of such other county, if the offence be bailable, to find bail; or else shall carry him back again before a justice in the county from whence the warrant did first issue. See *R.* v. *Kynaston*, 1 *East*, 117.

Arrest in order to find sureties to appear at the next sessions.

In the case of *Mayhew* v. *Parker*, 8 *T. R.* 110. it was determined that a warrant to arrest the party, to the end that he may become bound to appear at the *next* sessions, *&c.* means the *next sessions after the arrest*, and not after the date of the warrant; therefore the officer executing it may justify an arrest after the sessions next ensuing the date of the warrant.

Taking the power of the county.

A private person cannot raise power to arrest or detain a felon. 1 *Hale*, 601.

But any justice, or the sheriff, may take of the county any number that he shall think meet, to pursue, arrest, and imprison traitors, murderers, robbers, and other felons; or such as do break, or go about to break, or disturb the king's peace: and every man, being required, ought to assist and aid them, on pain of fine and imprisonment. *Dalt. c.* 171.

It is not justifiable for a justice, sheriff, or other officer, to assemble the *posse comitatus*, or raise a power or assembly of people, upon their own heads, without just cause. *Dalt. c.* 171.

But where a justice, sheriff, or other officer, is enabled to take the power of the county, it seemeth they may command and ought to have the aid and attendance of all knights, gentlemen, yeomen, husbandmen, labourers, tradesmen, servants, and apprentices, and of all other persons being above the age of fifteen years, and able to travel. *Dalt. c.* 171.

Women, ecclesiastical persons, and such as be decrepit, or diseased, shall not be compelled to attend them. *Id.*

And in such case it is referred to the discretion of the justice, sheriff, or other officer, what number they will have to attend on them, and how and after what manner they shall be armed or otherwise furnished. *Id.*

Breaking open doors.

As to the case of breaking open doors, in order to apprehend offenders, it is to be observed that the law doth never allow of such extremities but in cases of necessity; and therefore no one can justify breaking open another's door to make an arrest, unless he first signify to those in the house the cause of his coming, and request them to give him admittance. 2 *Haw. c.* 14. § 1.

No precise form of words is required in a case of this kind. It is sufficient that the party hath notice, that the officer cometh not as a mere trespasser, but claiming to act under a proper authority, provided that the officer has a legal warrant. *Fost.* 137.

But where a person authorised to arrest another, who is sheltered in a house, is denied quietly to enter into it, in order to take him, it seems generally to be agreed that he may justify breaking open the doors in the following instances:

(1) Upon a *capias* grounded on an indictment for any crime whatsoever; or upon a *capias* from the chancery or king's bench, to compel a man to find sureties for the peace or good behaviour, or even upon a warrant from a justice of peace for such purpose. 2 *Haw.* c.14. § 3.

(2) When one known to have committed a treason or felony, or to have given another a dangerous wound, is pursued either with or without a warrant by a constable or private person; but where one lies under a probable suspicion only, and is not indicted, it seems the better opinion at this day (Mr. *Hawkins* says c.14. § 7.) that no one can justify the breaking open doors in order to apprehend him: And this opinion he founds on *Coke's* 4 *Inst.* 177. and *Hale's Pleas of the Crown*, 91.

But upon a warrant for probable cause of suspicion of felony, the person to whom such warrant is directed may break open doors to take the person suspected, if upon demand he will not surrender himself, as well as if there had been an express and positive charge against him; and so (he says) hath the common practice obtained, notwithstanding the contrary opinion of Lord *Coke;* for in such case the process is for the king, and therefore a *non omittas* is implied. 1 *Hale*, 580. 583. 2 *Hale*, 117.

And as he may break open such person's own house, so much more may he break open the house of another, to take him; for so the sheriff may do upon a civil process: But then he must at his peril see that the felon be there; for if the felon be not there, he is a trespasser to the stranger whose house it is. 2 *Hale*, 117. *Semayne's case*, 5 *Rep.* 92. *a.*

But it seems that he that arrests as a *private man*, barely upon suspicion of felony, cannot justify the breaking open of doors to arrest the party suspected, but he doth it at his peril, that is, if in truth he be a felon, then it is justifiable, but if he be innocent, but upon a reasonable cause suspected, it is not justifiable. 1 *Hale*, 82.

But a *constable* in such case may justify, and the reason of the difference is this; because in the former case it is but a thing permitted to private persons to arrest for suspicion, and they are not punishable if they omit it; and therefore they cannot break open doors; but in case of a constable, he is punishable if he omit it upon complaint. 2 *Hale*, 92.

And in general, an officer upon any warrant from a justice, either for the peace or good behaviour, or in any case where the king is party, may by force break open a man's house, to arrest the offender. *Dalt.* c. 169.

It is justifiable for a private person to break and enter the house of another, and imprison his person, in order to prevent him murdering his wife. *Handcock* v. *Baker*, 2 *Bos. & Pull.* 260. *ante*, p. 214, 215.

(3) On a warrant to search for stolen goods the doors may be broke open, if the goods are there; and if they are not there, the constable seems indemnified, but he that made the suggestion is punishable. 2 *Hale*, 151.

(4) Where forcible entry or detainer is found by inquisition before justices of the peace, or appears on their view. 2 *Haw.* *c.*14. § 6.

(5) On a *capias utlagatum*, or *capias pro fine*. *Id.* § 2.

(6) On the warrant of a justice of the peace for the levying of a forfeiture, in execution of a judgment, or conviction for it, grounded on any statute, which gives the whole or any part of such forfeiture to the king. *Id.* § 5.

(7) Where an affray is made in a house, in the view or hearing of the constable, he may break open the doors to take them. 1 *Haw. c.* 63. § 16. 2 *Haw. c.*14. § 8.

(8) If there be disorderly drinking or noise in a house at an unseasonable time of night, especially in inns, taverns, or alehouses, the constable, or his watch, demanding entrance, and being refused, may break open the doors, to see and suppress the disorder. 2 *Hale*, 95.

(9) Wherever a person is lawfully arrested for any cause, and afterwards escapes, and shelters himself in a house. 2 *Haw.* *c.*14. § 9.

(10) But upon a general warrant, without expressing any felony or treason, or surety of the peace, the officer cannot break open a door. 1 *Hale*, 584.

(11) Neither ought doors to be broken open to take a person, who is required to take certain oaths by virtue of a statute, because in such case the warrant is not grounded on a precedent offence. 2 *Haw. c.*14. § 11. 12 *Rep.* 131.

(12) In a civil suit, the officer cannot justify the breaking open an outward door or window in order to execute process. If he doth, he is a trespasser. But if he findeth the outward door open, and entereth that way, or if the door be opened to him from within, and he entereth, he may break open inward doors, if he findeth that necessary, in order to execute his process. *Fost.* 319. *Lloyd* v. *Sandilands*, *ante*, p. 216.

For a man's house is his castle, for safety and repose to himself and family; but if a stranger, who is not of the family, upon a pursuit taketh refuge in the house of another, this rule doth not extend to *him*, it is not *his* castle, he cannot claim the benefit of sanctuary therein. *Fost.* 320. See *Semayne's case*, *ante*, p. 220.

And it is always to be remembered that this rule must be confined to the case of arrest upon process in civil suits only. For where a *felony* hath been committed, or a dangerous wound given, or even where a minister of justice cometh armed with process founded on a breach of the peace, the party's own house is no sanctuary for him; in these cases, the justice which is due to the public must supersede every pretence of private inconvenience. *Fost.* 320.

(13) Finally, in all these cases, if an officer, to serve any warrant, enter into a house, the doors being open, and then the doors are locked upon him, he may break them open in order to regain his liberty. 2 *Haw. c.*14. § 11.

Killing in the arrest or pursuit.

If there be a warrant against a person for a trespass or breach of the peace, and he fly and will not yield to the arrest, or being taken, make his escape; if the officer kill him, it is murder. 2 *Hale*, 117. 1 *East's P. C.*, 302.

But if such person, either upon the attempt to arrest, or after

the arrest, assault the officer, to the intent to make his escape from him, and the officer standing upon his guard kill him, this is no felony; for he is not bound to go back to the wall as in common cases of *se defendendo*, for the law is his protection. 2 *Hale*, 118. 1 *East's P. C.*, 302.

But where a warrant issueth against a person for *felony*, and either before arrest or after he flies and defends himself with stones or weapons, so that the officer must give over his pursuit, or otherwise cannot take him without killing him, if he kill him, it is no felony. And the same law is for a constable that doth it by virtue of his office, or on hue and cry. *Id.*

But then there must be these cautions: 1. He must be a lawful officer; or there must be a lawful warrant. 2. The party ought to have notice of the reason of the pursuit, namely, because a warrant is against him. 3. It must be a case of necessity, and that not such a necessity as in the former case, where an assault is made upon the officer; but this is the necessity, namely, that he cannot otherwise be taken. 2 *Hale*, 119. 1 *East's P. C.* 312.

If an innocent person be indicted of a felony, where in truth no felony was committed, and will not suffer himself to be arrested by the officer who has a warrant for that purpose, he may lawfully be killed by him if he cannot otherwise be taken; for there is a charge against him upon record, to which, at his peril, he is bound to answer. 1 *Haw. c.* 28. § 12. [*See tit.* Homicide, Vol. II.]

But though a private person may arrest a felon, and if he fly, so as he cannot be taken without he be killed, it is excusable in this case for the necessity, yet it is at his peril that the party be a felon; for if he be innocent of the felony, the killing (at least before the arrest) seems at least manslaughter; for an innocent person is not bound to take notice of a private person's suspicion. 2 *Hale*, 119.

Whether the constable need to show his warrant.

A person sworn and commonly known, and acting within his own precinct, need not show his warrant, but he ought to acquaint the party with the substance of it. 2 *Haw. c.* 13. § 28.

An officer giveth sufficient notice what he is, when he saith to the party, *I arrest you in the king's name;* and in such case the party at his peril ought to obey him, though he knoweth him not to be an officer; and if he have no lawful warrant the party grieved may have his action of false imprisonment. *Dalt.* *c* 1 69. *p.* 404.

But the learned editor of *Hale's* history observes hereupon, that the books referred to intend the general warrant constituting such person an officer, as a bailiff, or the like, in a civil action; though it may be otherwise in case of felony, because in such case a private person may arrest a felon without any warrant at all. 2 *Hale*, 116. 1 *id.* 458. *notis.*

Hall v. Roche.

Even in a civil action, if the officer make the arrest without any warrant, and before the writ be delivered to the sheriff, the arrest is illegal. And in *Hall* v. *Roche*, 8 *T. R.* 188. (in which such was the fact) Lord *Kenyon* C. J. said, if it be established as law by the cases cited that is not necessary to show the warrant to the party arrested who demands to see it, I will not shake those authorities: but I cannot forbear observing that if it be so established, it is a most dangerous doctrine; because it may affect the party criminally in case of any resistance; and if homicide

ensue, the legality of the warrant enters materially into the merits of the question. I do not think that a person is to take it for granted that another, who says he has a warrant against him, without producing it, speaks truth. It is very important that in all cases where an arrest is made by virtue of a warrant, the warrant (if demanded at least) should be produced.

A warrant was issued to apprehend the plaintiff upon a charge of a conspiracy: a constable went to the plaintiff's house with the warrant, showed it to him, allowed him to take a copy of it, and then was accompanied by the plaintiff to the magistrate, who, after examining him, dismissed him. Trespass for assault and false imprisonment was brought against the magistrate, and a verdict was given for the defendant. Upon showing cause against a rule for setting aside the verdict, Sir *J. Mansfield* C. J. held, that as the plaintiff went voluntarily before the magistrate, the warrant being made no other use of than as a summons, this was no arrest, and therefore the verdict was right. *Arrowsmith* v. *Le Mesurier*, 2 *N. R.* 211.

But if he act out of his precinct, or be not sworn and commonly known, he must show his warrant if demanded. 2 *Haw*. *c.*13. § 28. Otherwise the party may make resistance, and needs not to obey it. *Dalt*. *c.*169. In no case however is a constable required to part with the warrant out of his own possession; for that is his justification. 1 *East's P. C.* 319. 2 *Ld. Raym*. 1196. 24 *G.*2. *c.*44. § 6. *post*, p. 224.

Constable in no case to part with warrant

But if the constable hath no warrant, but doth it by virtue of his office as a constable, it is sufficient to notify that he is a constable, or that he arrests in the king's name. 1 *Hale*, 589.

Warrant of distress. 27 G.2. c.20.

But in the case of a warrant of distress, issued by a justice of the peace, for levying a pecuniary forfeiture or sum of money, it is specially provided by stat. 27 *G.*2. *c.*20. that the officer executing the same shall, if required, show his warrant to the person whose goods are distrained, and shall suffer a copy thereof to be taken.

No arrest by words only.

If the constable come unto the party, and require him to go before the justice, this is no arrest nor imprisonment. *Dalt*. *c.*170. and see *Arrowsmith* v. *Le Mesurier*, *ante*.

For bare words will not make an arrest, without laying hold on the person, or otherwise confining him. But if an officer come into a room, and tell the party he arrests him, and lock the door, this is an arrest; for he is in custody of the officer. 1 *Salk*. 79. 2 *Haw*. *c.*19. § 1. *Cas. Temp. Hardw*. 301.

Retaking after arrest.

It hath been holden that if a constable, after he hath arrested the party by force of a warrant, suffer him to go at large upon his promise to come again and find sureties, he cannot afterwards arrest him by force of the same warrant: However, if the party return, and put himself again under the custody of the constable, it seems it may be probably argued that the constable may lawfully detain him, and bring him before the justice in pursuance of such warrant; but in this the law doth not seem to be clearly settled. 2 *Haw*. *c.*13. § 9.

But if the party arrested do escape, the officer upon fresh suit may take him again and again, so often as he escapeth, although he were out of view, or that he shall fly into another town or county. *Dalt*. *c.*169. *p.*905.

V. What is to be done after the Arrest.

When a private person hath arrested a felon, or one suspected of felony, he may detain him in custody, till he can reasonably dismiss himself of him; but with as much speed as conveniently he can, he may do any of these three things: *By a private person.*

(1) He may carry him to the common gaol; but that is now rarely done. 1 *Hale*, 589. 2 *Hale*, 77.

(2) He may deliver him to the constable, who may either carry him to gaol, or to a justice of the peace. 1 *Hale*, 589.

(3) He may carry him immediately to a justice of the peace. *Id.*

If the constable or his watch hath arrested affrayers, or persons drinking in an alehouse disorderly at an unseasonable time of night, he may put the persons in the stocks, or in a prison, if there be one in the vill, till the heat of their passion or intemperance is over, though he deliver them afterwards, or till he can bring them before a justice. 2 *Hale*, 95. *By a watchman.*

If the arrest be by virtue of a warrant, when the officer hath made the arrest, he is forthwith to bring the party, according to the direction of the warrant. If it be to bring the party before the justice who granted the warrant specially, then the officer is bound to bring him before the same justice; but if the warrant be to bring him before any justice of the county, then it is in the election of the officer to bring him before what justice he thinks fit, and not in the election of the prisoner, *Foster's Case*, 5 *Rep.* 59.*b*. 1 *Hale*, 582. 2 *Hale*, 112. *By an officer by warrant.*

But if the time be unseasonable, as in or near the night, whereby he cannot attend the justice, or if there be danger of a present rescue, or if the party be sick, he may secure him in the stocks, or in a house, till the next day, or such time as it may be reasonable to bring him. 2 *Hale*, 120.

And when he hath brought him to the justice, yet he is in law still in his custody till the justice discharge, or bail, or commit him. *Id.*

But it is said, the constable is not obliged to return the warrant itself, but may keep it for his own justification, in case he should be questioned for what he had done, but only to return what he has done upon it. 2 *Ld. Raym.* 1196. 1 *East's P. C.* 319. *Returning the warrant.*

And this seems to be implied in the statute of the 24 *G.*2. *c.*44. § 6. which enacts, That no action shall be brought against any constable or other officer, or person acting by his order, and in his aid, for any thing done in obedience to any warrant of a justice of the peace, under his hand and seal, until demand hath been made, or left at the usual place of his abode, by the party intending to bring such action, or by his attorney in writing, signed by the party demanding the same, of the perusal and copy of such warrant, and the same hath been refused or neglected for six days after such demand; and if, after compliance therewith, any such action shall be brought, without making the justice or justices who signed or sealed the warrant defendant or defendants, on producing and proving such warrant at the trial, the jury shall give their verdict for the defendant.—And it is certain that the constable cannot grant a perusal or copy of the warrant, unless he hath it in his custody. *24 G. 2. c 44. Constable indemnified.*

23 H. 6. c. 9. Fee for arrest.

By an ancient statute, 23 *Hen.* 6. *c.* 9. No sheriff shall take for any arrest but 20*d.* and the bailiff which maketh the arrest 4*d.* on pain of 40*l.*; half to the king, and half to him that will sue in sessions (or the courts above); and treble damages to the party injured: and see *Dew* v. *Parsons*, *E.* 1819, 2 *B. & A. R.* 562.

Upon which statute perhaps may be founded the custom in many places, of giving 4*d.* to the constable with the warrant, for his trouble in executing the same; which indeed at that time might be a reasonable satisfaction; for 4*d.* then was worth more than ten times the value of 4*d.* now. Which decrease in the value of money, in this and many other cases, depending upon ancient statutes, may seem to require some consideration.

Arson. See Burning.

Assault and Battery.

See Vol. III. tit. Maim.

I. *Assault, what.*
II. *Battery, what.*
III. *In what Cases they may be justified.*
IV. *How punished.*

[43 Eliz. c. 6.—22 & 23 C. 2. c. 9.—9 Ann. c. 14.—c. 16.—6 G. 1. c. 23.—58 G. 3. c. 30.—3 G. 4. c. 114.—4 G. 4. c. 54.]

I. Assault, what.

What is an assault.

AN assault, *assultus*, from the French *assayler*, is an attempt or offer, with force and violence, to do a corporal hurt to another; whether from malice or wantonness, as by striking at him with or without a weapon, though the party striking misses his aim; so drawing a sword, throwing a bottle or glass, with intent to wound or strike, presenting a gun at a person within the distance to which the gun will carry, or pointing a pitchfork at a person standing within reach; holding up one's fist at him, in a threatening or insulting manner; or with such other circumstances as denote at the time an intention, (coupled with a present ability) of using actual violence against his person, will amount to an assault. 1 *Haw.* c. 62. § 1. 2. *Bull. N. P.* 15. 1 *Selw. N. P.* 27. 1 *East's P. C.* 406. 1 *Russ.* 862. 3 *Blac. Com.* 120.

From hence it clearly follows that one charged with an assault and battery may be found guilty of the assault, and yet acquitted of the battery: But every battery includes an assault: therefore on an indictment of assault and battery, in which the assault is ill laid, if the defendant be found guilty of the battery, it is sufficient. 1 *Haw. c.* 62. § 1.

If a master takes indecent liberties with a female scholar, without her consent, though she does not resist, he is liable to be punished as for an assault. *R. M. T.* 1807.

A master took very indecent liberties with a female scholar of 13 by putting her hand into his breeches, pulling up her petticoats,

and putting his private parts to hers — she did not resist, but it was against her will. The jury found him guilty of an assault with intent to commit a rape, and also of a common assault: on case, the judges thought the finding as to the latter clearly right. *R.* v. *Nichol, Sum Ass.* 1807. cor. *Graham* B. *MS. C. C. R. M. T.* 1807.

Rex v. *Dawson*, 3 *Stark, C. N. P.* 62. *York Sum. Ass.* 1821. Indictment for assaulting a female child with intent to abuse and carnally to know her — the jury found that the prisoner assaulted the child with intent to abuse her, but negatived the intention charged carnally to know her. *Holroyd* J. held that the averment of intention was divisible, and sentenced the prisoner to 12 months' imprisonment: and see *R.* v. *Evans*, 3. *Stark. C. N. P.* 35.

Words cannot amount to an assault.

It seems agreed at this day, that no words whatsoever can amount to an assault, though perhaps they may in some cases serve to explain a doubtful action; as if *A.* lays his hand upon his sword, and says, "If it were not assize time, I would not take such language from you." These words would prevent the action from being construed to be an assault, because they shew he had no intent to do him any corporal hurt at that time, and a man's intention must operate with his act in constituting an assault. 1 *Haw. c.*62. § 1. *Bull. N. P.*15. 1 *Mod.*3.

II. Battery, what.

Battery, what.

Battery (from the Saxon *batte*, a club, or *beaten*, to beat, from whence cometh also the word *battle*) seemeth to be, when any injury whatsoever, be it never so small, is actually done to the person of a man in an angry, or revengeful, or rude, or insolent manner, as by spitting in his face, or any way touching him in anger, or violently justling him out of the way, and the like. 1 *Haw. c.*62. § 2.

Touching.

The least touching of another's person wilfully, or in anger, is a battery: for the law cannot draw the line between different degrees of violence, and therefore totally prohibits the first and lowest stage of it; every man's person being sacred, and no other having a right to meddle with it, in any the slightest manner. 3 *Blac. Com.*120.

Spitting on.

The indictment was for a battery upon Dr. *R.* The evidence was that the defendant spit in his face. *Holt* C. J. It is a battery. 6 *Mod.*170. *Reg.* v. *Catesworth.*

III. In what Cases they may be justified.

When justifiable.

If an officer, having a lawful warrant against one who will not suffer himself to be arrested, but resists and endeavours to rescue himself, beat or wound him in the attempt to take him, he may justify it. So if a *parent* in a reasonable and proper manner chastise his child, or a *master* his servant, being actually in his service at the time, or a *schoolmaster* his scholar (*a*), or a gaoler his prisoner, or even a *husband* his wife; or if a man force a sword from one who offers to kill another; or if a man gently lay his hands on another, and thereby stay him from inciting a dog against a third person; *or* if I beat one (without wounding him, or throwing at him a dangerous weapon) who wrongfully endeavours with vio-

(*a*) Pult. 6. § 16.

lence to dispossess me of my land or goods, or of the goods of another delivered to me to be kept for him, and will not desist upon my laying my hands gently on him and disturbing him; *or* if a man beat, wound, or maim one who makes an assault upon his person, or that of his wife, parent, child, or master; *or* if a man fight with, or beat one who attempts to kill any stranger; *or* if a man even threaten to kill one who puts him in fear of death, in such a place where he cannot safely fly from him; *or* if one imprison those whom he sees fighting, till the heat is over; in all these cases it seems the party may justify the assault and battery. 1 *Haw.* c.60. § 23. 1 *Bac. Abr. tit. Assau. & Batt.*244. 1 *Ld. Raym.* 231. *Bull. N. P.*18. 3 *Blac. Com.*121.

Master may correct his apprentice, scholar, &c.

In *Keit's* case, 3 *Salk.*47. it was adjudged *per Holt* C. J. that a master may justify beating his apprentice, servant, scholar, &c. *if the beating is in nature of correction only, and with a proper instrument* (a), otherwise, *immoderate* correction is a good reply to a justification of the action.

Servant may justify in defence of his master

A wife may justify an assault in defence of her husband; so also a servant in defence of his master, but not a master in defence of his servant, because he may have an action *per quod servitium amisit. Leeward* v. *Basilee*, 1 *Ld. Raym.*62. 1 *Salk.*407. *Bull. N. P.*18.

Master cannot.

It is said that a servant may not justify beating another in defence of his master's son, though he were commanded to do so by the master, because he is not a servant to the son; and that for the like reason a tenant may not beat another in defence of his landlord. 1 *Haw.* c.61. § 24. 1 *Salk.*407.

In defence of possession.

If *A.* enters into the ground of *B.* unlawfully, *B.* must request him to depart before he can lay hands on him to turn him out; for every *impositio manuum* is an assault and battery, which cannot be justified upon the account of breaking the close in law without a request. But if the entry be *forcible*, as by breaking down a gate, or the like, a request to depart is unnecessary; for acts of violence on the part of the trespasser, may be instantly opposed by such acts of violence on the part of the owner as may be necessary for the immediate defence of his possession. 2 *Salk.*641. 1 *Sel. N. P.*33. *Green* v. *Goddard.*

If there be an attempt made to disseise a man of his land, or dispossess him of his goods, or to disturb him of his high-way, or to turn an ancient watercourse from his mill, he may lawfully use force to resist it. *Pult.* 42. § 33.

Likewise, if a person comes into my house, and will not go out, I may justify laying hold of him, and turning him out.

But in general, unless there be violence in the trespass, a party should not, either in defence of his person, or his real or personal property, begin by striking the trespasser, but should request him to depart or desist, and if that is refused, should gently lay his hands upon him in the first instance, and not proceed with greater force than is made necessary by resistance. *Weaver* v. *Bush*, 8 *T. R.*78. 1 *Russ.*869. Thus, where a churchwarden justifies taking off the hat of a person who wore it in church at the time of divine service, the plea stated, that he first requested the plaintiff to be uncovered, and that the plaintiff refused. *Hawe* v. *Planner*, 1 *Saund.*13. *Com. Dig.* (*Esglise.*) *F.*2.

(a) *e. g.* A rod. *Pult*, 6. *b.* § 16.

And where a man in his own defence beats another who first assaults him, he may take advantage thereof, both upon an indictment, and upon an action; but with this difference, that on an indictment he may give it in evidence upon the plea of not guilty, but on an action he must plead it specially. 1 *Haw. c.*62 § 3.

And if a defendant prove that the plaintiff first lifted up his staff, and offered to strike him, it is a sufficient assault to justify his striking the plaintiff, and he need not stay till the plaintiff has actually struck him. *Bull. N. P.*18.

However, every *assault* will not justify every *battery*, but it is matter of evidence whether the assault were proportionable to the battery.

It is not every trifling assault that will justify a grievous and immediate mayhem, such as cutting off a leg or hand, or biting off a joint of a man's finger, unless it happened accidentally, without any cruel and malignant intention, or after the blood was heated in the scuffle; but it must appear that the assault was in some degree proportionable to the mayhem. 1 *East's P. C.*402.

IV. How punished.

By action and indictment.

There is no doubt but that the wrong-doer is subject both to an action at the suit of the party, wherein he shall render damages, and also to an indictment at the suit of the king, wherein he shall be fined according to the heinousness of the offence. 1 *Haw. c.* 62. § 4. Nor will the court in which the action is brought, compel the plaintiff to make his election to pursue either the one or the other; for the fine to the king, upon the criminal prosecution, and the damages to the party in the civil action, are perfectly distinct in their natures. *Jones* v. *Clay*, 1 *Bos. & Pull.* 191. 1 *Selw. N. P.* 28. n. (2).

43 Eliz. c.6
23 C.2. c.9..
Certificates for costs.

But in an action of assault and battery, where the jury shall give less than 40*s*. damages, the plaintiff shall have no more costs than damages, unless the judge shall certify on the back of the record that an actual battery (and not an assault only) was proved upon the trial. 43 *El. c.*6. § 22. 23 *C.*2. *c.*9. § 136.

58 G.3. c.30.

In actions of trespass for assault, if damages are given under 40s. plaintiff to recover only so much costs as damages so given.

And by stat. 58 *G.*3. *c.*30. for preventing frivolous and vexatious actions and suits of assault and battery, and for slanderous words in inferior courts, it is enacted, that "in all actions or suits of trespass for assault and battery, to be commenced in any court having, or which by H. M.'s writ of *justicies* may have jurisdiction to hold pleas in actions or suits to the amount of 40*s*. (other than H. M.'s courts at *Westminster*, the court of great sessions for the principality of *Wales*, the court of great sessions for the county palatine of *Chester*, the court of common pleas for the county palatine of *Lancaster*, or the court of pleas for the county palatine of *Durham*,) if the jury upon the trial of the issue in such action, or the jury that shall enquire of the damages, do find or assess the damages under 40*s*. then the plaintiff or plaintiffs in such action or suit shall have and recover only so much costs as the damages so given or assessed amount unto, without any further increase of the same.

If damages be laid under 40s. and assessed

By § 2. it is enacted, "that in all actions or suits of assault and battery, or for slanderous words, to be sued or prosecuted in any court whatsoever which hath not jurisdiction to hold plea to

58 G. 3. c. 30.

under 30s. plaintiff shall recover only costs to the amount of damages given.

the amount of 40*s.* in such actions or suits, if the jury upon the trial of the issue in such action or suit, or the jury that shall enquire of the damages do find or assess the damages under 30*s.*, then the plaintiff or plaintiffs in such action or suit shall have and recover only so much costs as the damages so given or assessed shall amount to, without any further increase of the same."

Aggravation of offence.

It is an aggravation of the offence, on account of the person on whom, or the place where the same is committed: As where a man assaults or threatens another for suing him; a counsel or attorney for being employed against him; a juror for his verdict; or a gaoler, [constable,] or other ministerial officer for keeping him in custody, and properly executing his duty. 4 *Blac. Com.* 126.

6 G. 1. c. 23.

By stat. 6 *G.*1. *c.*23. § 11. Assaulting in the streets or highway, with intent to spoil people's clothes, and so spoiling them, is felony and liable to transportation.

4 G. 4. c. 54.

Assaults with intent to commit robbery.

Demanding money, goods, &c.

Threatening to accuse of crimes with intent to extort money.

Stat. 4 *G.*4. *c.*54. § 5. repeals stat. 7 *G.*2. *c.*21. except only as to offences committed before *July* 8. 1823.; and enacts that from *July* 8. 1823, if any person shall maliciously assault any other person with intent to rob such other person, or shall by menaces or by force maliciously demand money, security for money, goods, or chattels, wares or merchandize of any other person with intent to steal the same, or shall maliciously threaten to accuse any other person of any crime punishable by law with death, transportation, or pillory, or of any infamous crime with a view or intent to extort or gain money, security for money, goods or chattels, wares or merchandize from the person so threatened, or shall procure, counsel, aid, or abet the commission of the said offences or of any of them: every person so offending being thereof lawfully convicted shall be adjudged guilty of felony, and shall be liable at the discretion of the court, to be transported beyond the seas for life, or for such term not less than seven years as the court shall adjudge, or be imprisoned and kept to hard labour in the common gaol or house of correction for any term not exceeding seven years.

9 Ann. c. 16.

By stat. 9 *Ann. c.* 16. Assaulting a privy counsellor in the execution of his office is felony without benefit of clergy.

9 Ann. c. 14.

And by stat. 9 *Ann. c.*14. § 8. Any person assaulting or challenging another, on account of money won by gaming or betting, shall on conviction by indictment or information forfeit to the king all his goods and chattels, and be imprisoned for two years.

3 G. 4. c. 114.

Persons guilty of certain assaults may be sentenced to hard labour.

By stat. 3 *G.*4. *c.*114. § 1. It is enacted that from and after the passing of this act (*viz.* 5th *Aug.* 1822.) whenever any person shall be convicted of any assault with intent to commit felony, or of any assault upon a peace officer, or upon an officer of the customs or excise, or upon any other officer of the revenue, in the due discharge and execution of his or their respective duty or duties, or upon any person or persons acting in aid of any such officer or officers in the due discharge and execution of his or their respective duty or duties: or of any assault committed in pursuance of any conspiracy to raise the rate of wages, it shall be lawful for the court before which any offender shall be convicted, or which by law is authorised to pass sentence upon any such offender, to award and order (if such court shall think fit) sentence of imprisonment *with hard labour* for any term not exceeding the term for which

such court may now imprison for such offences, either in addition to or in lieu of any other punishment which may be inflicted on any such offenders by any law in force before the passing of this act, (*viz.* 5. *Aug.* 1822.) and every such offender shall thereupon suffer such sentence in such place and for such time as aforesaid as such court shall think fit to direct.

Private assault.

A private assault is not enquirable in the leet, not being a common nuisance, as all affrays are. 1 *Haw. c.*63. § 1.

Punishment.

The punishment usually inflicted upon persons convicted of assaults and batteries, is fine, imprisonment, and the finding of sureties to keep the peace. But in cases of assaults of a very aggravated nature (*e. g.* with intent to commit an unnatural crime) the punishment of whipping has been inflicted in addition to that of imprisonment and finding sureties for good behaviour. *R.* v. *Schofield, Chester Sum. Ass.*, 1814. Cor. *Garrow* C. J. and *Burton* J. *MS.* See 1 *East's P. C.* 406.

In cases where the offence more immediately affects the individual, the defendant is sometimes permitted by the court, even after conviction, to speak with the prosecutor, before any judgment is pronounced, and a trivial punishment (generally a fine of a shilling) is inflicted if the prosecutor declares himself satisfied. 4 *Blac. Com.* 363. 364.

And where, in a case of indictment for ill treating a parish apprentice, a security for the fair expenses of the prosecution has been given by the defendant after conviction, upon an understanding, that the court would abate the period of his imprisonment, the security was held to be good, upon the ground that it was given with the sanction of the court, and to be considered as part of the punishment suffered by the defendant in expiation of his offence, in addition to the imprisonment inflicted on him. *Beeley* v. *Wingfield*, 11 *East.* 46.

A.

A. Warrant for an Assault.

County of } To the constable of — —, in the said county.

WHEREAS complaint hath been made before me J. P. *esquire, one of his majesty's justices of the peace in and for the said county, upon the oath of* A. I. *of* ——— *in the said county, tailor, that* A. O. *of* ——— *aforesaid, butcher, did on the* ——— *day of* ——— *violently assault and beat him the said* A. I. *at* ——— *aforesaid in the county aforesaid: These are therefore, in his said majesty's name, to command you forthwith to apprehend the said* A. O. *and to bring him before me to answer unto the said complaint, and to be farther dealt withal according to law. Given under my hand and seal the* ——— *day of,* &c.

B.

B. Indictment for an Assault.

County of } *THE jurors for our lord the king upon their oath present, that* A. O. *of* ——— *in the said county of* ———, *butcher, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ———, *at* ——— *aforesaid in the county aforesaid, in and upon* A. I. *tailor, then and there being in the peace of God and of our said lord the king, with force and arms, an assault*

did make, and him the said A. I. *then and there did beat, wound, and evil intreat, and then and there to him other enormous things did, to the great damage and hurt of him the said* A. I. *to the evil example of all others offending in the like kind, and against the peace of our said lord the king his crown and dignity.*

C.

C. Indictment against Sir Edward Littleton, Bart. for assaulting Samuel Hellier, Esq. in his own House. *From the MSS. of the late Mr. Serjeant Williams.*

Staffordshire. *THE jurors for our lord the king, upon their oath present, that Sir* Edward Littleton, *of* Teddesley Coppice, *otherwise the* Coppice, *in the county of* Stafford, *Baronet, on the twenty-second day of* October, *in the thirty-second year of the reign of our sovereign lord* George *the Second, by the grace of God of* Great Britain, France, *and* Ireland, *king, defender of the faith, &c., with force and arms, to wit, with a certain horsewhip, which he the said Sir* Edward *then had and held in his right hand, at the parish of* Wombourn *in the county aforesaid, made an assault upon* Samuel Hellier, *esquire, then and there being in his own dwelling-house there situate, in the peace of God and our said lord the king, and him the said* Samuel, *then and there did beat, strike, and whip several times with the said horse-whip, giving to the aforesaid* Samuel *divers severe and violent blows and strokes by the same whip, and then and there otherwise greatly ill-treated the said* Samuel, *to the great damage of the said* Samuel, *and against the peace of our said lord the king, his crown and dignity.*

D.

D. Indictment for an Assault with an Intent to ravish.

Staffordshire. *THE jurors for our lord the king, upon their oath present, that* A. O. *late of the parish of* Stone, *in the said county of* Stafford, *on the* ——— *day of* ——— *in the* ——— *year, &c., with force and arms, at the parish aforesaid, in the county aforesaid, in and upon* A. V. *spinster, in the peace of God, and our said lord the king, then and there being, did make an assault, and her the said* A. V. *then and there did beat, wound, and ill-treat, so that of her life it was greatly despaired, with an intent her the said* A. V. *against her will, then and there, feloniously to ravish, and carnally know, and other wrongs to the said* A. V. *then and there did, to the great damage of the said* A. V. *and against the peace of our said lord the king, his crown and dignity.* [Another count for a common assault.]

Assizes.

[19 G. 3. c. 74.—38 G. 3. c. 52.—39 G. 3. c. 45.—49 G. 3. c. 91.—3 G. 4. c. 10.]

Assize, what.

ASSIZE (*assessio*) anciently signified in general, a court where the judges or assessors heard and determined causes; and

more particularly upon writs of *assize* brought before them, by such as were wrongfully put out of their possession. Which writs heretofore were very frequent; but now men's possessions are more easily recovered by ejectments, and the like. Yet still the judges in their circuits have a commission of *assize*, directed to themselves and the clerk of assize, to take assizes, and to do right upon such writs.

To which commission of *assize*, four other commissions are now superadded; to wit,

The circuit commissions.

(1) A commission of *general gaol delivery*, directed to the judges and the clerk of assize associate; which gives them power to try every prisoner in the gaol, committed for any offence whatsoever; but none but prisoners in the gaol.

At *Stafford Lent Assizes*, 1810, *Wood* B. ordered eight prisoners, against whom no bills had been preferred, and who were committed for trial at the general quarter sessions of the peace, to be discharged out of custody; observing that every prisoner had a right to be tried by the first competent tribunal, and that he was bound by his commission to deliver the gaol. *MS.*

(2) A commission of *oyer and terminer*, directed to the judges, and many other gentlemen of the county; by which they are empowered to *hear and determine* treasons, felonies, and other misdemeanors, by whomsoever committed, whether the persons to be tried be in gaol or not in gaol.

(3) A commission or writ of *nisi prius* directed to the judges and clerk of assize, by which civil causes brought to issue in the courts above, are tried in the vacation by a jury of twelve men of the county where the cause of action arises; and on return of the verdict of the jury to the court above, the judges there give judgment.

(4) A commission of the *peace* in every county of their circuit.

Sheriffs, justices, and others, to attend there.

By the precept for the general gaol delivery before-mentioned, the sheriff is commanded to attend there in person with his under-sheriff; and to give notice to all justices of the peace, mayors, coroners, escheators, stewards, and also to all chief constables and bailiffs of hundreds and liberties, that they be then and there in their own persons with their rolls, records, indictments, and other remembrances, to do those things which to their offices in that behalf appertain to be done.

Justices of peace are bound to attend the assizes.

By virtue whereof all justices of the peace, mayors, and others above-mentioned, of that county where the judges have their assizes, are bound to be present; and if they make default, without lawful impediment, the judges may set a fine upon them for their neglect. *Cro. Circ. C.* 3. 4 *Blac. Com.* 270.

Constable's presentment.

Also, by ancient custom (that is, by the common law of the land) before the coming of the judges, the high constables issue their warrants to the petty constables, headboroughs, borsholders, &c. to make presentments of all crimes and offences cognizable at the assizes; to the intent (as it seemeth) that the judges thereby may have a general information and knowledge, how the peace hath been kept; which presentments, being delivered to the high constables, are by them delivered into court, and make up part of the rolls and other remembrances above-mentioned.

Which said warrants of the high constables perhaps may be best drawn upon the words of the commission of oyer and ter-

miner, which is the largest of all the five commissions above-mentioned; and then the form thereof may be thus:

County of ———, Hundred of ———, or ——— ward, &c. } To the constable of ——— in the said county.

THESE are to require you the said constable, in his majesty's name, to make out a presentment in writing of all treasons, misprisions of treasons, insurrections, rebellions, counterfeitings, clippings, washings, false coinings, and other falsities of the money of Great Britain, *and of other kingdoms and dominions whatsoever; and of all the murders, felonies, manslaughters, killings, burglaries, rapes of women, unlawful meetings and conventicles, unlawful uttering of words, assemblies, misprisions, confederacies, false allegations, trespasses, riots, routs, retentions, escapes, contempts, falsities, negligences, concealments, maintenance, oppressions, champerty, deceits, and all other evil doings, offences and injuries whatsoever, and also the accessaries of them; by whomsoever, and in what manner soever done, committed or perpetrated, within your constablewick. Which said presentment so made in writing as aforesaid, and signed by you, you are to deliver to me at ——— in the said county, on the ——— day of ——— at the hour of ——— in the forenoon of the same day, that I may have the said presentment ready to be delivered to his said majesty's justices of oyer and terminer and general gaol delivery at the next assizes to be holden for the said county. Herein fail you not, as you will answer the contrary at your peril. Given under my hand, the ——— day of ———, in the year of our Lord ———.*

J. B. *High Constable.*

Constable's *Presentment pursuant* to the above Precept.

County of ——— Hundred of ——— } At a Special Sessions held at ——— in the said County the ——— day of ——— one thousand eight hundred and ———.

THE presentment of J. C. *constable of the parish* (or *township*) *of ——— in the said county, for the next general assizes,* (*or general quarter sessions of the peace,* as the case may be) *to be holden at ———, in and for the said county, made upon oath, before me, one of his majesty's justices of the peace acting in and for the said hundred and county, the ——— day of ——— one thousand eight hundred and ———.*

I the above-named J. C. *do make oath and declare, that I have none of those things given me in charge, to present, within my constablewick;* [if any matter presentable, state the facts and circumstances.]

J. C. *Constable.*

Taken and sworn the day and year above written. Before me,
J. P.

The authority of the judges of *nisi prius* is by the commission of assize. 3 *Blac. Com.* 60.

By stat. 19 G.3. c.74. § 70. made perpetual by 39 G. 3. c. 46. reciting, that "whereas the courts of assize, nisi prius, oyer and terminer, and gaol delivery, for several counties at large, are often held in or near cities or towns that are counties of themselves, and at the same time with the like courts for the said cities or towns; and inconveniences frequently arise in transacting the business of the several courts, for that the lodgings of the judges are situate either only in the county at large, or only in the county of such city or town;" it is therefore enacted, that whenever the said courts for any county at large in *England*, shall be held in or near any city or town which is also a county of itself, with the like or any of the like courts for the said city or town, the lodgings of the judges shall be construed and taken to be situate both within the county at large, and also within the county of such city or town, for transacting the business of the assizes for such county at large, and for the county of such city or town, during the time that such judge or judges shall continue therein for the execution of their several commissions.

19 G.3. c.74. In what cases the judges may act, though out of the proper county.

By stat 38 G. 3. c. 52. § 1. reciting, whereas there at present exists in the counties of cities and of towns corporate within this kingdom an exclusive right that all causes and offences which arise within their particular limits should be tried by a jury of persons residing within the limits of the county of such city or town corporate; which ancient privilege, intended for other and good purposes, has in many instances been found by experience not to conduce to the ends of justice: And whereas it will tend to the more effectual administration of justice in certain cases, if actions, indictments, and other proceedings, the causes of which arise within the counties of cities and towns corporate, were tried in the next adjoining counties, enacts, that from and after the 1st of *June* 1798, in every action, whether transitory or local, which shall be prosecuted or depending in any of H. M.'s courts of record at *Westminster;* and in every indictment removed into the K. B. by *certiorari;* and in every information filed by H. M.'s Attorney or Solicitor General; or by the leave of the court of K. B.; and in all cases where any person or persons shall plead to or traverse any of the facts contained in the return to any writ of mandamus, if the venue in such action, indictment, or information, be laid in the county of any city or town corporate within that part of *G. B.* called *England,* or if such writ of mandamus be directed to any person or persons, body politic, and corporate, that it shall be lawful for the court in which such action, &c. or other proceeding shall be depending, at the instance of the prosecutor or plaintiff, or of any defendant, to direct the issue or issues joined in such action, &c. to be tried by a jury of the county next adjoining to the county of such city or town corporate; and to award proper writs of *venire* and *distringas* accordingly, if the said court shall think it fit so to do.

38 G.3. c.52.

In what case the court may direct an issue to be tried by a jury of the county next adjoining to the city or town corporate in which the venue is laid.

§ 2. Indictments for offences committed within the county of any city or town corporate, may be preferred to the jury of the county next adjoining.

§ 3. Indictments found by the grand jury, or inquisitions taken before the coroner of the county of a city or town corporate, may be ordered by the court to be filed with the proper officer of the next adjoining county, and defendants may be removed to the gaol thereof. See Indictment, Vol. III.

49 G. 3. c. 91.

By stat. 49 *G.* 3. *c.* 91. The judges may act in counties in which they reside or were born.

3 G. 4. c. 10.

By stat. 3 *G.* 4. *c.* 10. intituled, *An act to enable, in certain cases, the opening and reading of commissions under which the judges sit upon the circuits, after the day appointed for holding assizes;*

When commissions shall not be opened and read at any places specified on the day named therein, the same may be opened and read the following day, not being Sunday, &c.

§ 1. it is enacted, "that whenever it shall so happen that commissions of assize shall not be opened and read in the presence of one of the quorum commissioners, at any place specified for holding the assize, on the very day appointed for such purpose, it shall and may be lawful to open and read the same in the presence of one of the quorum commissioners therein named on the following day, or if the following day shall be a *Sunday*, or any other day of public rest, then on the succeeding day; and such opening and reading thereof shall be as effectual, to all intents and purposes, as if the same had been opened and read in the presence of one of the quorum commissioners on the very day appointed for that purpose, and shall be deemed and taken to be an opening and reading thereof on the day for that purpose appointed; and all records and other proceedings under or relating to any commission which may be opened and read by virtue of this act, shall and may be drawn up, entered, and made out under the same date, and in the same form, in all respects, as if such commission had been opened and read on the day originally appointed for that purpose: Provided always, that the judges and quorum commissioners are hereby directed and required to have such commissions opened and read on the very days appointed for that purpose, unless the same shall be prevented by the pressure of business elsewhere, or by some unforeseen cause or accident."

But commissions shall be opened and read on the days appointed, if not prevented.

When commission shall be opened under this act, the cause of delay shall be certified to the Lord Chancellor, &c.

§ 2. "In every case in which it shall happen that any such commission shall be opened and read under the provisions of and according to this act, the quorum commissioner, before whom the same shall be opened and read, shall, under his hand and seal, certify to the lord chancellor, lord keeper, or lords commissioners of the great seal for the time being, that the said commission was so opened, and the cause of the delay of opening and reading the same; which certificate shall be inrolled in the high court of chancery."

Attachment.

THIS word, as a law term, we have immediately from the French *attacher*, to tye, or make fast. The Italian word is *attacare;* the Spanish *attacar;* and the Saxon *tæcan*, to take.

It signifieth the taking of a man's body by commandment of a writ or precept; and is properly grantable in cases of contempts, against which for the most part all courts of record generally, but more especially those of *Westminster-hall*, and above all, the court of King's bench, may proceed in a summary manner, according to their discretion. 2 *Haw. c.* 22. § 1. 4 *Blac. Com.* 284.

In the case of *Rex* v. *Bartlett*, 2 *Sess. Cas.* 176. it is said that generally the sessions have not a power to award an attachment:

but the Court said, they would not determine how it would have been, if they had committed the person for contempt; but the ordinary and proper method is by indictment.

When an order, however, is confirmed by the court above, an attachment lies for non-performance of it; and therefore the court will not take security of the party for performance of it. *Q.* v. *Chaffey*, 2 Ld. *Raym.* 858. 1 *Bott.* 472.

Attainder.

[Stat. 54 G. 3. c. 145.]

THE difference between a man attainted and convicted is, that a man is said to be convicted before he hath judgment, as if a man be convicted by verdict or confession, and when he hath his judgment upon the verdict or confession, then he is said to be attainted. 1 *Inst.* 390. *b.*

That is to say, his blood is become (*attinctus*) *tainted*, stained, or corrupted; insomuch that by the common law, in cases of treason or felony, his children or other kindred cannot inherit his estate, nor his wife claim her dower; and the same cannot be restored or saved, but by act of parliament; and therefore in divers instances, there is a special provision by act of parliament that such or such an attainder shall not work corruption of blood, loss of dower, nor disherison of heirs. 1 *Inst.* 391. *b.*

54 G. 3. c. 145.

By stat. 54 *G.* 3. *c.* 145. intituled, " An act to take away corruption of blood save in certain cases," it is enacted, that no attainder for felony which shall take place from and after the passing of this act, save and except in cases of the crime of high treason, or of the crimes of petit-treason or murder, or of abetting, procuring, or counselling the same, shall extend to the disinheriting of any heir, nor to the prejudice of the right or title of any person or persons other than the right or title of the offender or offenders during his, her, or their natural lives only; and that it shall be lawful to every person or persons, to whom the right or interest of any lands, tenements, or hereditaments, after the death of any such offender or offenders, should or might have appertained if no such attainder had been, to enter into the same.

Attaint. See title Jurors.

Attorney.

I. *What Person may be an Attorney.*
II. *Regulations to be observed previously to practising.*
III. *Stamp Regulations.*

IV. *General Regulations as to their Conduct.*
V. *Their Bill.*
VI. *Their Privilege and Right of Lien.*
[4 H. 4. c. 19. — 1 H. 5. c. 4. — 3 J. c. 7. — 7 & 8 W. c. 24. — 12 G. 1. c. 29. — 2 G. 2. c. 23. — 5 G. 2. c. 18. — 6 G. 2. c. 27. — 12 G. 2. c. 13. — 22 G. 2. c. 46. — 34 G. 3. c. 14. — 37 G. 3. c. 60. — 37 G. 3. c. 90. — 39 & 40 G. 3. c. 72. — 54 G. 3. c. 144. — 55 G. 3. c. 184. — 1 & 2 G. 4. c. 48. — 3 G. 4. c. 16.]

I. What Person may be an Attorney.

Attorney, who.

AN *attorney* is one who is appointed to do any thing in the *turn*, stead, or place of another. 1 *Inst.* 51.

5 G. 2. c. 18. Justice not to act as an attorney,

By stat. 5 *G.* 2. *c.* 18. § 2, 3, 4. No attorney or solicitor shall be capable to continue or be a justice of the peace within any county during such time as he shall continue in the business and practice of an attorney or solicitor, on pain of forfeiting 100*l.* But this is not to extend to any city or town being a county of itself, nor to any city, town, or liberty, having justices of their own.

nor under-sheriff.

Stat. 1 *H.* 5. *c.* 4. No under-sheriff, sheriff's clerk, receiver, nor sheriff's bailiff, shall be attorney in the king's courts, during the time that he is in office with any such sheriff.

nor steward of a franchise;

Stat. 4 *H.* 4. *c.* 19. No steward, bailiff, nor minister of lords of franchises, which have return of writs, shall be attorney in any plea within the franchise or bailiwick, whereof he shall be officer.

nor persons convicted of barratry or other crime.

Stat. 12 *G.* 1. *c.* 29. § 4. If any person, who hath been convicted of forgery, perjury, or subornation of perjury, or common barratry, shall practise as an attorney or solicitor, or agent, he shall be transported for seven years.

II. Regulations to be observed previously to practising.

To be bound for five years.

No person shall act as an attorney or solicitor, unless he shall have been bound for five years, and shall have continued in such service for that term. 2 *G.* 2. *c.* 23. § 5. 7.

It is not enough for a clerk to serve part of his time with another attorney with his master's consent, and the rest of his time with his master. 7 *T. R.* 456. *Ex parte John Hill, one, &c.*

Regulations previously to admission.

Any person applying to be admitted an attorney of B. R., who has not been admitted an attorney or solicitor of any other court, shall for one full term, previous to application to be admitted, cause his name and place of abode, and the name and place of abode of the attorney to whom he was articled, to be affixed in legible characters on the outside of the court of B. R. where public notices are usually affixed, and in a conspicuous place in the chambers of each of the judges of the court and in the king's bench office; otherwise he cannot be admitted an attorney. *Reg. Gen. T.* 31 *G.* 3. 4 *T. R.* 379.

Reg. Gen. T. 33 *G.* 3. 5 *T. R.* 368. It is ordered that every person, who shall intend to apply as above stated, shall comply with the above in part recited rule (except as to fixing up his name and place of abode in the judge's chambers,) and shall instead thereof, for the space of one full term, previous to the term in

which such person shall apply to be admitted, enter or cause to be entered in a book to be kept for that purpose at each of the judge's chambers of this court his name and place of abode, and also the name and place of abode of the attorney or attornies to whom he shall have been articled; and that no person who shall not have complied with this rule shall in future be admitted an attorney.

Every person admitted an attorney of common pleas (not being an attorney of king's bench, or a solicitor in chancery, or in the exchequer,) must before he is sworn file with the secondary his articles of clerkship, with the affidavit of the execution thereof, and of due service under the same, and that the notices have been given as required by the rule 31 *G.* 3. 1 *Bos.* & *Pul.* 90.

1&2 G.4. c.48.

Stat. 1&2 *G.*4. *c.*48. intituled "*An act to amend the several acts for the regulation of attornies and solicitors,*" § 1. After reciting stats. 2 *G.* 2. *c.* 23. § 5. 7. 22 *G.* 2. *c.* 46, § 8. 10. 7 *G.* 2. (I), by which acts clerkship and actual service for five years, and affidavits thereof, were made necessary in order to being admitted an attorney, enacts "that in case any person who shall have taken or who shall take the degree of bachelor of arts or bachelor of law, either in the university of *Oxford*, or in the university of *Cambridge*, or in the university of *Dublin*, shall, at any time after he shall have taken or shall take such degree, be bound by contract in writing to serve as a clerk, for and during the space of three years, to an attorney or to a solicitor, or to a six clerk duly and legally sworn and admitted under the provisions and directions of the said recited acts of the 2d year and 7th year of the reign of king *George* the 2d, or of this act, or of any other act or acts in force for the regulation of attornies and solicitors, in some or one of the courts of law or equity in the said recited acts mentioned, and during the said term of three years shall continue in such service, and during the whole time of such three years service, shall continue and be actually employed by such attorney or solicitor, or six clerk, or his or their agent or agents, in the proper business, practice, or employment of an attorney or solicitor, and shall also cause an affidavit, or being one of the people called quakers, a solemn affirmation of himself, or of such attorney or solicitor, or six clerk to whom he was bound as aforesaid, to be duly made and filed, that he hath actually and really so served and been employed during the said whole term of three years, in like manner as is required by the said recited acts of the 2d year and of the 7th year, and of the 22d year of the reign of king *George* the 2d, with respect to persons by the said acts required to serve for the term of five years, shall and may be qualified to be sworn, or to take his solemn affirmation, and to be admitted and enrolled as an attorney or solicitor respectively (according to the nature of his service) in the several and respective courts of law or equity, as fully and effectually to all intents and purposes, as any person having been bound and having served five years, is qualified to be sworn, or to take his solemn affirmation, and to be admitted or enrolled under or by virtue of the said recited acts, or any other act or acts for the regulation of attornies or solicitors in *England.*"

Any person who has taken a degree at Oxford, Cambridge, or Dublin, may act as an attorney or solicitor, after having served a clerkship of three years.

§ 2. "If any person who now is or hereafter shall be bound by contract in writing to serve as a clerk as aforesaid, for the space of five years in manner mentioned by the said recited acts, or any or

Persons bound for five years, and serving part

1&2 G.4. c.48.

of that time, not exceeding one year, with a barrister or special pleader, may be admitted, on applying to a judge or other sufficient authority.

either of them, or any other acts now in force relating to the service of persons intended to be admitted as attornies or solicitors in *England* or *Ireland*, shall actually and *bonâ fide* be and continue as pupil to any practising barrister, or to any person *bonâ fide* practising as a certificated special pleader in *England* or *Ireland*, for any part or parts of the said term of five years, not exceeding one year, it shall be lawful for the judge or other sufficient authority to whom such person shall apply to be admitted as attorney or solicitor as aforesaid, upon affidavit or affirmation of such clerk, and of such barrister or special pleader, to be duly made and filed, and upon being satisfied that such person so applying for admission had actually and really been and continued with, and had been employed as pupil by such practising barrister or special pleader as aforesaid, (but not otherwise), to admit such person as attorney or solicitor, in like manner as is now done in cases where the clerk has served part of the term of his clerkship with the agent of the person to whom he has been bound."

Nothing in 41 G. 3. (U.K.) c. 90. to extend to the registrars or solicitors of the universities, &c.

§ 3. "Nothing in stat. 41 *G.*3.(U.K.) *c.*79. *for the better regulation of public notaries in England*, shall extend, or be construed to extend, to the registrars or solicitors of the universities of *Oxford* and *Cambridge*, or to the steward or solicitors of any college or hall within the said universities, or to the chapter clerk of any cathedral or collegiate church, acting only as such registrars, solicitors, stewards, or chapter clerks."

This act to extend only to Bachelors of Arts who have taken their degrees within the periods herein mentioned, &c.

§ 4. "Nothing in this act contained shall extend, or be construed to extend, to any person who shall have taken or shall take such degree of bachelor of arts, unless such person shall have taken or shall take such degree within six years next after the day when such person shall have been or shall be first matriculated in the said universities respectively; nor to any person who shall take or shall have taken such degree of bachelor of law within eight years after such matriculation; nor to any person who shall be bound, by contract in writing, to serve as a clerk to any attorney, solicitor, or six clerk, under the provisions of this act, unless such person shall be so bound within four years next after the day when such person shall have taken such degree."

3 G.4. c.16. Recited act not to extend to persons taking the degree of Bachelor of Law, unless such persons shall have taken such degree within eight years after matriculation.

But by stat. 3 *G.*4. *c.*16. after reciting, that whereas by stat. 1 & 2 *G.*4. *c.*48. It is among other things provided and enacted, that nothing in the said act contained shall extend or be construed to extend to any person who shall take or shall have taken such degree of bachelor of law as in the said act is contained within eight years after such matriculation as in the said act is mentioned: and whereas by mistake certain words were omitted in the said proviso and enactment, and it is expedient that the said proviso and enactment should be amended in manner hereinafter mentioned, it is enacted and provided, "that nothing in the said act contained shall extend or be construed to extend to any person who shall take or shall have taken such degree of bachelor of law as in the said act is mentioned, unless such person shall have taken or shall take such last-mentioned degree within eight years after such matriculation as in the said act is mentioned; and that so much of the said recited act shall be repealed whereby it is provided and enacted, that nothing in the said act contained shall extend or be construed to extend to any person who shall take or shall have taken such degree of bachelor of law within eight years

after such matriculation, and so much of the said recited act is hereby repealed accordingly."

III. Stamp Regulations.

By 34 *Geo.* 3. *c.* 14. § 1. certain stamp duties were imposed, which, however, are repealed by subsequent acts.

By stat. 55 *Geo.* 3. *c.* 184. 55 G.3. c.184.

	£.	s.	d.
Articles of clerkship, or contract, whereby any person shall first become bound to serve as a clerk; in order to his admission as an attorney or solicitor,			
in any of his majesty's courts at *Westminster* -	120	0	0
in any of the courts of the great sessions in *Wales*, or of the counties palatine of *Chester*, *Lancaster*, and *Durham*; or in any other court of record in *England*, holding pleas, where the debt or damage amounts to forty shillings - - - - -	60	0	0
And for any counterpart or duplicate of any such articles or contract of clerkship - - -	1	15	0
Articles of clerkship, or contract, whereby any person (*not being an attorney of one of the courts at Westminster*) shall first become bound to serve as a clerk, in order to his admission as a sworn clerk, in the office of the six clerks of the court of chancery, or as a sworn clerk, clerk in court, or side clerk, in the office of pleas, or the office of his majesty's remembrancer, in the court of exchequer, in *England* -	120	0	0
And for any counterpart or duplicate thereof -	1	15	0
Articles of clerkship, or contract, whereby any person shall become bound to serve as a clerk, in order to any such admission as aforesaid, for the residue of the term, for which he was originally bound, in consequence of the death of his former master, or of the contract between them being vacated by consent, or by rule of court, or in any other event -	1	15	0
And for any counterpart or duplicate thereof -	1	15	0
And where any person, having entered into any articles of clerkship or contract, duly stamped according to the law in force at the date thereof, in order to his admission as a sworn clerk, clerk in court, or side clerk, in the court of chancery, or court of exchequer, or in order to his admission as an attorney or solicitor in any of the courts at *Westminster*, shall afterwards enter into any such articles or contract as aforesaid, for any other of those purposes; the said last-mentioned articles or contract shall be charged only with a duty of - - - - -	1	15	0
And the counterpart or duplicate thereof - -	1	15	0

And where the same articles of clerkship shall be a qualification to any person to be admitted, not only as an attorney or solicitor in any of the courts at *Westminster*, but also as a sworn clerk, clerk in court or side clerk, in the court of chancery, or court of exchequer, or as an attorney or solicitor in any of the inferior courts aforesaid; such articles shall not be charged with more than one duty of 120*l*.

Articles of clerkship, or contract, whereby any person

55 G. 3. c. 184.

	£.	s.	d.
shall first become bound to serve as a clerk, in order to his admission as a proctor in the high court of admiralty in *England*, or in any of the ecclesiastical courts in *Doctors' Commons* - - -	120	0	0
And for any counterpart or duplicate thereof -	1	15	0
Articles of clerkship, or contract, whereby any person shall become bound to serve as a clerk, in order to his admission as a proctor in any of the courts aforesaid, for the residue of the term for which he was originally bound, in consequence of the death of his former master, or of the contract between them being vacated, or in any other event - -	1	15	0
And for any counterpart or duplicate thereof -	1	15	0
Certificate to be taken out *yearly*; by every person admitted as an attorney or solicitor in any of his majesty's courts at *Westminster*, or in any of the courts of the great sessions in *Wales*, or of the counties palatine of *Chester*, *Lancaster*, and *Durham*, or in any other court in *England*, holding pleas, where the debt or damage amounts to forty shillings; — and by every person admitted as a proctor in any of the ecclesiastical or admiralty courts in *England*; — and by every person admitted as a writer to the signet, or as a solicitor, agent, attorney, or procurator, in any of the courts in *Scotland*; — and by every person admitted or inrolled as a notary public in *England* or *Scotland*; — and also by every sworn clerk, clerk in court, and other clerk or officer in any of the courts aforesaid, who, in his own name, or in the name of any other person, shall commence, prosecute, carry on, or defend any action, suit, prosecution, or other proceeding, in any of the courts aforesaid, or do any notarial act whatever, for or in expectation of any fee, gain, or reward, as an attorney, solicitor, agent, proctor, procurator, or notary public, although not admitted or enrolled as such;			
If he shall reside in the city of *London*, or city of *Westminster*, or within the limits of the twopenny post in *England*, or within the city or shire of *Edinburgh*;			
And if he shall have been admitted, or been in possession of his office, for the space of three years or upwards - - - - - -	12	0	0
Or if he shall not have been admitted or been in possession so long - - - - -	6	0	0
If he shall reside *eleswhere*;			
And if he shall have been admitted, or been in possession of his office, for the space of three years or upwards - - - - - -	8	0	0
Or if he shall not have been admitted, or been in possession so long - - - - - -	4	0	0
But no one person is to be obliged to take out more than one certificate, although he may act in more than one of the capacities aforesaid, or in several of the courts aforesaid.			

Exemptions.

55 G.3. c.184.

All clerks and officers of any of the courts aforesaid, who shall act or be concerned in the conduct or management of any action, suit, prosecution, or other proceeding, by virtue and in the execution of their respective offices or appointments only, and shall not be also retained or employed by any party to such action, suit, prosecution or other proceeding, or by any attorney, solicitor, agent, proctor or procurator, on behalf of any party thereto, for or in expectation of any fee or reward, other than the established fees due and payable in respect of their offices and appointments.

37 G.3. c.90. Certificate to be obtained.

(*a*) By 37 *Geo*.3. *c*.90. § 26. every such attorney [or notary, 39 & 40 *Geo*.3. *c*.72. § 7.] shall annually between the 1st *November* and the end of *Michaelmas* term then next following, before he begin and so long as he shall continue to practise, deliver to the commissioners of stamps at the head office a paper or note in writing, containing his name and usual place of residence; and thereupon and upon payment of the duty aforesaid he shall be entitled to a certificate duly stamped to denote the payment of the said duty; [and see stat. 25 *Geo*.3. *c*. 80. § 3.]

54 G.3. c.144. Alteration of the period for attornies, &c. to take out their annual certificates.

But by stat. 54 *Geo*.3. *c*.144. § 13. after reciting, that "whereas it is expedient to alter the period now fixed for attornies, solicitors, and others in *England*, to take out their annual certificates, and pay the stamp duty thereon;" it is enacted, "That all attornies, solicitors, proctors, notaries public, and others, who by the laws in force would be bound to take out stamped certificates, and pay the duty thereon at the head office of stamps in *Middlesex* annually, between the first day of *November* and the end of *Michaelmas* term following, shall in future take out such certificates and pay the duty thereon, and do all other acts necessary for that purpose, annually between the 15th day of *November* and the 16th day of *December* in each year; and in default thereof, shall be subject and liable to such and the same penalties, forfeitures, and disqualifications, as they would have been under the laws now in force for not taking out such certificates within the period first above mentioned."

Regulation for dates of certificates and their continuance in force.

§ 14. Further enacts, "That all certificates which shall have been taken out by such attornies, solicitors, proctors, notaries public, and others as aforesaid, and which would under the laws in force cease and determine on the 1st day of *November* 1814, shall continue in force until the 15th day of the same *November* inclusive; and that from and after the said 15th day of *November*, 1814, all certificates which shall be taken out between the 15th day of *November* and the 16th day of *December* in any year, by attornies, solicitors, proctors, notaries public, and others, hereby required to take out the same within that period, shall be dated on the 16th day of *November*; and all certificates which shall be taken out by any such persons at any other time shall be dated on the day on which the same shall be granted; and all such certificates respectively shall have effect and continue in force from the day of the date thereof until the 15th day of *November* following, both inclusive, and no longer."

Such certificate to be entered.

By 37 *Geo*.3. *c*.90. § 27. such certificate shall be entered in one

(*a*) For the present duty, see stat. 55 *G*.3. *c*.184. *ante*, p. 241, 242.

37 G.3. c.90.

of the courts in which such person shall be admitted, inrolled, sworn, and registered with the officer of such court, within the time aforesaid, or before he be permitted to practise.

37 G.3. c.90. 39&40 G.3. c.72. Penalty.

Every person (attorney or notary) who shall practise in any of the said courts in his name, or in the name of any other, without obtaining such certificate as aforesaid, or without duly entering the same, or shall deliver in a wrong place of residence, with intent to evade the payment of the higher duty, shall forfeit 50*l.* and shall be incapable of practising. 37 *Geo* 3. *c*.90. § 30. and 39 & 40 *Geo*. 3 *c*. 72. § 7.

37 G.3. c.90. Persons neglecting to take out certificates for a year.

Any person admitted, sworn, &c. as aforesaid, and who shall neglect to obtain a certificate in manner aforesaid, for one whole year, shall from thenceforth be incapable of practising; but he may be re-admitted on payment of the duty accrued, since the expiration of his last certificate, and such penalty as the court may order. 37 *Geo*. 3. *c*. 90. § 31.

IV. General Regulations as to Conduct.

By stat. 7 & 8 *W*. 3. *c*. 24. Any attorney or solicitor acting as such before he hath taken the oaths and subscribed the declaration, as other persons qualified for offices, shall incur a *præmunire*.

May act in inferior courts of record.

By stat. 6 *G*. 2. *c*. 27. § 2. Any person who hath been admitted an attorney in any of H. M.'s courts of record at *Westminster*, shall be capable of being admitted to practise as an attorney in any inferior court of record; provided he be in all other respects qualified according to the custom of such inferior court.

Persons not qualified to act at the session.

By stat. 22 *G*. 2. *c*. 46. § 12. No person shall act as attorney, solicitor, or agent, at any general or quarter sessions of the peace, without being duly inrolled and continuing on the roll, according to stat. 2 *G*. 2. *c*. 23. on pain of 50*l*. to him who shall sue in twelve months, with treble costs: and if any attorney or solicitor shall permit him to make use of his name in such sessions, he shall forfeit 50*l*. in like manner.

§ 14. No clerk of the peace or his deputy, or any under sheriff or his deputy, shall act as solicitor, attorney, or agent, to sue out any process at any general or quarter sessions of the peace of the county or place where he shall execute his said office respectively, on pain of 50*l*. in like manner.

Nor in the county court.

By stat. 12 *G*. 2. *c*. 13. § 7. A person acting as attorney or solicitor in the county court, without having been legally admitted, shall forfeit 20*l*. with costs to him who shall sue in twelve months in any of H. M.'s courts of record.

To have no more than two clerks.

By stat. 2 *G*. 2. *c*. 23. § 15. No attorney or solicitor shall have more than two clerks, who shall be bound by contract as aforesaid, at any one time.

By stat. 4 *H*. 4. *c*. 18. If any attorney be notoriously found in any default, of record, or otherwise; he shall forswear the court, and never after be received to make any suit in any court of the king.

And therefore, where an attorney sued out a *capias*, without an original; he was struck out of the roll, and sworn, that he be not an attorney in any of the king's courts. *Com. Dig.* Attorney. (B. 15.)

So an attorney, who gave names to the sheriff to be returned upon a jury, was cast over the bar. *Id.*

So if he take money of his client, and afterwards wholly refuses to intermeddle with his business; he shall be struck out of the roll. *Id.*

By stat. 2 *G.* 2. *c.* 23. § 17. If any sworn attorney shall knowingly suffer any person not being a sworn attorney or solicitor to act in his name, he shall be incapable to act as an attorney.

Suffering a person unqualified to act in his name.

An attorney has no right to interfere with the duties of a magistrate in his own justice room; and therefore where a criminal information was moved for against two justices, on the ground of their having deprived the defendant of legal assistance, by excluding his attorney from the justice room, (no corrupt motive being imputed to the magistrates,) the court of K. B. refused to interfere.—*Bayley* J. said, it might be a different thing where counsel are employed, but an attorney in all events has no right to be present. *Rex* v. *A. and B. Just. of Staffordshire*, 1 *Chitt. Rep.* 217.

An attorney has no right to be present on the hearing of informations before magistrates.

And in *Rex* v. *Borron* Esq. *H.* 60 *Geo.* 3. and 1 *Geo.* 4. 3 *B.* & *A.* 432., it was expressly decided by the court of K. B. that an attorney has no right to be present during the investigation of a charge of felony before a magistrate. The presence of an attorney, on such occasions, is often permitted, as a matter of courtesy; his assistance is sometimes desired, and if his advice and opinion are asked, it is proper for him to give them; but he is not to take leave, uninvited, to obtrude his commentaries upon the case. *Per Abbott* C. J., *S. C.* 3 *B.* & *A.* 439.

So also in *Cox, Gent. one, &c.* v. *Coleridge, Esq. and another, M.* 1822. 1 *B.* & *Cr.* 37. It was decided that a prisoner when examined before magistrates on a charge of felony is not entitled, as of right, to have a person skilled in the law present as an advocate on his behalf, it being a preliminary investigation only, and not conclusive upon him. See this case more fully stated in Vol. III. tit. Justices of the Peace, § 5.

V. Bill.

By 3 *J.* *c.* 7. All attornies and solicitors shall give a true bill unto their client, subscribed with their own hands and names before they shall charge their clients with their fees or charges.

To deliver a bill signed.

And if any attorney or solicitor shall demand by his bill any other sum of money, or allowance upon his account of any money, which he hath not laid out, the party grieved shall have his action for the same, and recover costs and treble damages; and such attorney or solicitor shall be discharged and incapacitated.

Penalty for a wrong charge.

By 2 *Geo.* 2. *c.* 23. § 23. No attorney or solicitor shall commence or maintain any action or suit for the recovery of any fees, charges, &c. at law or in equity, until the expiration of one month or more after such attorney, &c. shall have delivered unto the party to be charged therewith, or left for him, &c. at his, &c. dwelling house or last place of abode a bill of such fees, charges, &c. written in a common legible hand, and in the *English* tongue (except law terms and names of writs), and in words at length (except times and sums), which bill shall be subscribed with the proper hand of such attorney or solicitor respectively.

If any part of an attorney's bill be for business done in the court the bill must be delivered pursuant to statute, otherwise the

Business done in quarter sessions.

plaintiff cannot recover: and the court will refer an attorney's bill to be taxed, though all the business be done at the quarter sessions. *Winter* v. *Payne*, 6 *T. R.* 645. *Ex parte Williams*, 4 *T. R.* 496.

Delivery of an attorney's bill at the counting house of the defendant, who resided elsewhere, was held not a good delivery within the statute. *Hill* v. *Humphreys*, 2 *Bos. & Pull.* 343.

Charges for conveyancing are not within the statute. *S. C.*

By stat. 2 *G.* 2. *c.* 23. § 23. The client on submission to pay the whole sum that on taxation shall appear due, may have the bill taxed by the proper officer. And if the attorney or solicitor, or the party charged, having due notice, shall not attend the taxation; the officer may proceed to tax the bill *ex parte;* (and no suit shall be commenced for the said fees during the taxation.) And on taxation and settlement of the bill, the party shall forthwith pay to the said attorney or solicitor, or to any person by him authorised who shall be present at the taxation, or otherwise as the court shall direct, the whole sum that shall be found due; and in default thereof, the party shall be liable to an attachment, or to such proceedings at the election of the attorney or solicitor as the party shall be otherwise liable to by law. And if it appear on the taxation, that the attorney or solicitor hath been overpaid; he shall forthwith refund, on pain of attachment, or such other proceedings as aforesaid. If the bill taxed be less by a sixth part than the bill delivered, the attorney or solicitor shall pay the costs of taxation; but if it shall not be less, the court shall charge the attorney or client according to their discretion.

12 G. 2. c. 13.

By stat. 12 *G.* 2. *c.* 13. § 6. It is provided that the said act shall not extend to any bill of fees due from any attorney or solicitor, to any other attorney or solicitor or clerk in court; but they may use such remedies for the recovery thereof, as they might have done before the making of the said act.

VI. Privilege and Right of Lien.

Privilege.

An attorney, in respect of his attendance at the court, cannot be pressed for a soldier. *Com. Dig.* Attorney. (B. 16.)

But he is not privileged from serving in the militia, or finding a substitute in his stead. *Black. Rep.* 1123.

An attorney shall not be made constable, though there be a custom that every inhabitant shall be chosen in his turn. *Com. Dig.* Attorney. (B. 16.)

And, in general, it is said, that he shall not be elected into any other office against his will; as to the office of overseer of the poor, or churchwarden, or any office within a borough. *Id.*

If an attorney be denied his privilege, he may have a writ of privilege for his discharge. 2 *Haw. c.* 10. § 39.

But the privileges of an attorney continue only while he is a practising attorney, and while he has a certificate. *Brooke* v. *Bryant*, 7 *T. R.* 25.

And the court of C. P. held, that an attorney should not be allowed his privilege, unless he could shew that he had practised within a year previous to his arrest. *Dyson* v. *Birch*, 1 *Bos. & Pull.* 4.

Attornies, *plaintiffs*, are not, within the *London* court of con-

science act, 39 & 40 *Geo.* 3. *c.* 104. compellable to sue there for a debt under *5l.* at the peril of costs. *Board* v. *Parker*, 7 *East.* 47.

And this though the defendant were an attorney. *Id.* 50.

Lien on writings.

If he refuse a re-delivery of writings intrusted to his perusal, though some of them concern himself principally, the court, upon motion, will compel him to re-deliver them, on payment of all due to him in the cause for which they were delivered; for if the writings were delivered for a special purpose, he shall not detain them for another demand. *Id.*

For the court, under circumstances, will entertain a summary jurisdiction over an attorney of the court, in obliging him to deliver up deeds, &c. on satisfaction of his lien, though they came into his hands as steward of a court, and receiver of rents. Sir *Richard Hughes* v. *Mayre*, 3 *T. R.* 275.

But if it appear that a third person is interested in the deeds, the court will take security from the person to whom they are delivered, to produce them on demand for the inspection of such third person. *Id.*

If a lease be put into an attorney's hands for the purpose of making an assignment of it, the court will not, upon a summary application, cause him to deliver it up, on payment of his demand; there being no cause in court, nor any criminal conduct imputed to him in respect of it. *In the matter of S. Lowe*, 8 *East.* 237.

And the court will award an attachment against him, for bad and fraudulent practice; and he shall pay costs thereupon or shall be committed. But an attachment will not be granted before a day allowed to shew cause. *Com. Dig.* Attorney, (B. 15.)

Where an attorney undertakes to appear for a party, the court will oblige him to do it in all events.

Lien on money recovered.

But an attorney has a lien on the money recovered by his client for his bill of costs; therefore if the money come to his hands, he may retain to the amount of his bill. He may stop it *in transitu* if he can lay hold of it. If he apply to the court, they will prevent its being paid over until his demand is satisfied. If the attorney give notice to the defendant not to pay till his bill be discharged, a payment by the defendant after such notice would be in his own wrong, and like paying a debt which has been assigned after notice. *Dougl.* 238. So he has a lien on a sum awarded in favour of his client. *Ormerod* v. *Tate*, 1 *East.* 464.

Payment to the attorney is payment to the principal. *Dougl.* 613. 1 *Black. Rep.* 8.

As to Evidence by *Attorney*, see Evidence, *post.*

Auction, Duty on. See Excise, Vol. II.

Award.

THIS title not being immediately relative to the duties of a justice of peace or parish officer, it is proposed, in order not to increase the work unnecessarily, merely to insert in the present edition so much as may be requisite to shew what things may be submitted to arbitration; and to add only the

form of a common award, referring the reader for further information to the excellent treatise upon the subject published by Mr. Caldwell.

What things may be submitted to Arbitration.

Actions personal.

All matters of controversy, either of fact or of a right in things and actions personal and uncertain, may be submitted to arbitration. 9 *Rep.* 78.

All civil matters may be submitted to reference, as well as all costs incident thereto. *Per Gibbs* C. J. *Baker* v. *Townshend*, 1 *Moore*, *C. P.* 124.

Matters of freehold.

Matters of freehold, or any right and title to a freehold, cannot be submitted to arbitrament; for a freehold is not transferable from one to another, without livery and seisin: Yet if there be a submission concerning the right, title, or possession of lands and tenements, and the parties enter into mutual bonds, to stand to the award made relating to them, they forfeit their bonds unless they obey it. 1 *Roll. Abr.* 242. 244. *Wood. b.* 4. *c.* 3.

At the present day it is quite clear, that any disputes respecting land may be referred to arbitration, and that one party may be directed to execute all the necessary conveyances to the other, and to perform all such acts as may be requisite to confer the right and the possession. *Caldw. on Arbit.* 2.

Criminal offences.

In no criminal case, where it would be a public offence to compound an injury, can the matter be referred to arbitration; indeed it seems that parties would be punishable who should enter into such bonds. *Caldw. on Arbit.* 4.

But cases of minor grievance, such as assault, libel, conspiracy, nuisance, maintenance, and the like, wherever the party injured has a remedy by action, as well as by indictment, nothing can deter such party from referring the adjustment of the reparation, which he is to receive, to arbitration, although a criminal prosecution might have been commenced. *Caldw. on Arbit.* 4. 5. *Baker* v. *Townshend*, 1 *Moore*, 120. *Per Gibbs* C. J. *S. C.* p. 124. 7 *Taunt.* 722. *S. C.*

But it seems that, if an indictment have been already preferred, the express leave of the court must be obtained, to sanction a subsequent reference, *Caldw. on Arbit.* 5.

A mere question of law may be referred to an arbitrator: as may the construction which shall be put upon any particular instrument, will, or lease; nor will the court, under such circumstances, set aside the award, upon a suggestion that the arbitrator has mistaken the law. *Caldw. on Arbit.* 6.

56 G. 3. c. 184. Stamp duties.

By stat. 55 *G.* 3. *c.* 184. the former stamp duties on awards are, amongst others, repealed; and there is imposed

	£.	s.	d.
Upon every award a duty of - - - -	1	15	0
And where the same, together with any schedule, or other matter, put or indorsed thereon, or annexed thereto, shall contain 2160 words or upwards, then for every entire quantity of 1080 words contained therein, over and above the first 1080 words, a further progressive duty of -	1	5	0

If it be by deed, it must have the stamp appropriated to deeds.

Form of an Award.

TO all to whom these presents shall come, we A. B. *of* ——— *and* C. D. *of* ——— *send greeting.*

Whereas there are several accounts depending, and divers controversies have arisen, between ——— *of* ——— *yeoman, of the one part, and* ——— *of* ——— *yeoman, of the other part: And whereas, for putting an end to the said differences, they the said* ——— *and* ——— *by their several bonds or obligations bearing date* ——— *last past, are reciprocally become bound each to the other in the penal sum of* ——— *to stand to, abide, perform and keep the award, order, and final determination of us the said* ——— *so as the said award be made in writing, and ready to be delivered to the parties in difference on or before* ——— *next ensuing, as by the said obligations and conditions thereof may appear: Now know ye, that we the said arbitrators, whose names are hereunto subscribed, and seals affixed* (a), *taking upon us the burden of the said award, and having fully examined and duly considered the proofs and allegations of both the said parties, do make and publish this our award between the said parties, in manner following; that is to say, First, we do award and order that all actions, suits, quarrels, and controversies whatsoever, had, moved, arisen, and depending between the said parties in law or equity, for any manner of cause whatsoever, touching the said premises, to the day of the date of the submission, shall cease and be no farther prosecuted; and that each of the said parties shall pay and bear his own costs and charges in anywise relating to or concerning the premises. And we do also award and order that the said* ——— *shall deliver or cause to be delivered to the said* ——— *at* ——— *within the space of* ———, *&c. And further, we do hereby award and order, that the said* ——— *shall on or before* ——— *pay or cause to be paid unto the said* ——— *the sum of* ———. *We do also award and order,* &c. *And lastly, We do award and order, that the said* ——— *and* ——— *on payment of the said sum of* ——— *shall, in due form of law, execute each to the other of them, or to the other's use, general releases, sufficient in the law for the releasing by each to the other of them, his heirs, executors, and administrators, of all actions, suits, arrests, quarrels, controversies, and demands whatsoever, touching or concerning the premises aforesaid, or any matter or thing thereunto relating, from the beginning of the world, until the* ——— *day of* ——— *last past* (*viz.* the day of the date of the arbitration bonds). *In witness whereof we have hereunto set our hands and seals* (a) *the* ——— *day of* ———. A. B.

Witnesses hereof, C. D.

E. F.

G. H.

Backing a Warrant. See Warrant.

(a) If it be without seal, as it may be, *and seals* must be omitted.

Bail.

I. What it is.

BAIL (from the French *bailler*, to deliver,) signifies the delivery of a man out of custody, upon the undertaking of one or more persons for him, that he shall appear at a day limited, to answer and be justified by the law. 1 *Hale's Sum.* 96.

II. Difference between Bail and Mainprize.

The difference between bail and mainprize is, that mainpernors are only surety, but bail is a custody; and therefore the bail may retake the prisoner, if they doubt he will fly, and detain him, and bring him before a justice, and the justice ought to commit the prisoner in discharge of the bail, or put him to find new sureties. 1 *Hale's Sum.* 96.

III. When a Person may be discharged without Bail.

If a person be brought before a justice, if it appear that no felony is committed, he may discharge him; but if a felony be committed, though it appear not that the party accused is guilty, yet he cannot discharge him, but must commit or bail him. *Hale's Sum.* 98.

IV. Who may or may not be bailed.

At the common law bail was allowed in all cases but homicide: but now stat. 3 *Ed.* 1. *c.* 15. directeth what offenders shall be bailed, and what not. *Hale's Sum.* 97.

1&2 P.&M. c. 13.

It is true the said statute only prescribeth who shall or shall not be let to bail by the *sheriff;* but by stat. 1 & 2 *Ph. & M. c.* 13.

it is enacted, that no justice or justices of the peace shall let to bail or mainprize any person not replevisable by the said statute of 3 *Ed.* 1. *c.* 15.

3 Ed. 1. c. 15. What sort of offenders be not mainpernable.

Which statute is as follows: "*And forasmuch as sheriffs' and other, which have taken and kept in prison persons detected of felony, incontinent have let out by replevin such as were not replevisable, and have kept in prison such as were replevisable, because they would gain of the one party, and grieve the other; and forasmuch as before this time it was not determined which persons were replevisable, and which not, but only those that were taken for the death of man, or by commandment of the king, or of his justices, or for the forest; It is provided, and by the king commanded, that such prisoners as before were outlawed, and they which have abjured the realm, provors, and such as be taken with the manour, and those which have broken the king's prison, thieves openly defamed and known, and such as be appealed by provors, so long as the provors be living (if they be not of good name) and such as be taken for house-burning feloniously done, or for false money, or for counterfeiting the king's seal, or persons excommunicate, taken at the request of the bishop, or for manifest offences, or for treason touching the king himself, shall be in no wise replevisable by the common writ, nor without writ: But such as be indicted of larceny by inquests taken before sheriffs or bailiffs by their office, or of light suspicion, or for petty larceny that amounteth not above the value of* xii *d.* (*if they were not guilty of some other larceny aforetime*), *or guilty of receipt of felons, or of commandment, or force, or of aid in felony done; or guilty of any other trespass, for which one ought not to lose life nor member, and a man appealed by a provor after the death of the provor* (*if they be no common thieves defamed* (a),) *shall from henceforth be let out by sufficient surety, whereof the sheriff will be answerable and that without giving ought of their goods.*"

What sort of offenders be mainpernable.

Sheriffs and other.] That is to say, sheriffs and gaolers that have custody of gaols; so that this act extends not to any of the king's justices or judges of any superior courts of justice. But by a subsequent statute (as hath been said) it is extended to justices of the peace. 2 *Inst.* 185.

Persons not bailable at common law.

But only those, &c.] Here are first set down four sorts of persons, who, before this act, were not bailable by the common writ *de homine replegiando.*

Homicide.

1. *Those that were taken for the death of a man.*] By the ancient law of the land, in all cases of felony, if the party accused could find sufficient sureties, he was not to be committed to prison; but afterwards it was provided by parliament that in case of homicide the offender was not bailable. 2 *Inst.* 186.

And even if a person have dangerously wounded another, the justice ought to be very cautious how he takes bail till the year and day be past; for if the party die, and the offender appear not, he is in danger of being severely fined. 1 *Haw. c.* 63. § 19.

(a) In *Tomlins*'s Edition of the Statutes, is here subjoined, "Former translations read this sentence in the singular, as applying only to the man approved, whose approver is dead; but it appears to apply to all parties bailable." See 2 *Inst.* 190.

And it seems agreed, that justices of the peace, who have power at this day to bail a man arrested for a *light suspicion* of homicide cannot bail any such person for manslaughter, or even excusable homicide, if it manifestly appear that he was guilty of the fact, let it be ever so plain that it cannot amount to murder. 2 *Haw. c.* 15. § 34.

Commitments by the king.

2. *Or by commandment of the king.*] That is, by matter of record in one of his courts, according to law; and not an extra-judicial commandment. 2 *Inst.* 186, 187. So also it is provided in the petition of rights, 3 *Car.* that no person shall be detained in prison by the king's special command without cause certified.

And because some courts, as the king's bench, are before the king, and some before his justices, therefore the act saith *by commandment of the king*, and the next words be, *or of his justices.* 2 *Inst.* 186.

Or by his justices.

3. *Or of his justices.*] That is, or any of the courts of *Westminster*, or justices of assize. 2 *Haw. c.* 15. § 37.

Or for the forest.

4. *Or for the forest.*] But as to imprisonment for offences in forests, the law hath been much mitigated by later statutes. *Ib.* § 38.

All these four are excepted out of the common writ *de homine replegiando*, that the sheriff in his county court, which is not a court of record, shall not replevy any of these four that are committed, although it should be by an unlawful commitment: but the superior court at *Westminster*, upon an *habeas corpus*, shall do justice to the party in all these four cases. 2 *Inst.* 187.

Persons not replevisable.

Next the act doth further provide that these kinds of prisoners hereafter following (being 13 in number) *shall not be replevisable.*

Outlaws.

1. *Such prisoners as before were outlawed.*] Persons outlawed are *attainted* in law, and therefore are not bailable; for the intendment of the law in bail is, that the person standeth indifferent whether he be guilty or not; but when he is convict by verdict or confession, then he must be deemed in law to be guilty of the felony, and therefore not bailable at all. 2 *Inst.* 188.

Those who abjure the realm.

2. *And they which have abjured the realm.*] For these also are attainted upon their own confession, and therefore not bailable at all by law. 2 *Inst.* 188.

Provors.

3. *Provors.*] A provor, or *approver*, is a person that confesseth the felony with which he is charged, and undertakes to *prove* another guilty of the same crime; which if he do he saves his own life, ortherwise he shall be immediately executed. And the reason why they are not bailable is, because they are guilty by their own confession, and therefore they do not stand indifferent. 2 *Inst.* 188.

But this concerns not justices of the peace, because no man can become an approver before them, for they cannot assign a coroner. *Hale's Sum.* 102. See title Approver, *ante.*

Those taken with the manour.

4. *And such as be taken with the manour.*] For in this case likewise he standeth not indifferent whether he be guilty or no, being taken with the *mainer*, that is, with the thing stolen as it were in his *hand*, anciently called *hand-habbend;* and the like was anciently called *back-berend*, as a bundle or fardle at his *back;* which was used to signify manifest theft. 2 *Inst.* 188.

5. *And those which have broken the king's prison.*] Here are two offences; first, his breaking of the prison; for it is presumed that he who is innocent will never break prison; and, secondly, his flying, because he confesseth the fact who flies from judgment. 2 *Inst.* 188.

Prison breakers.

6. *Thieves openly defamed and known.*] Who, as it seems, ought not to be bailed for any fresh felony, whereof there is probable evidence against them. But this seems in a great measure to be left at the discretion of the person who has power to bail them, who, if he find it reasonable strongly to presume them to be guilty, ought not to bail but commit them. 2 *Haw. c.* 15. § 44.

Thieves openly defamed.

7. *Such as be appealed by provors so long as the provors be living (if they be not of good name).*] The appeal of the approver is forcible against the appellee, because the approver confesseth himself guilty of the same felony, and therefore it serveth in nature of an indictment against the appellee, so long as the approver liveth, unless the appellee be of good fame. 2 *Inst.* 188.

Persons appealed by approvers.

8. *And such as be taken for house-burning feloniously done.*] This was felony by the common law. 2 *Inst.* 188.

House-burners.

9. *Or for false money.*] This was treason by the common law. 2 *Inst.* 188.

Coiners.

10. *Or for counterfeiting the king's seal.*] This was also treason by the common law. 2 *Inst.* 188.

Counterfeiting the king's seal.

11. *Or persons excommunicate taken at the request of the bishop.*] That is, he that is certified into the chancery by the bishop to be excommunicated, and after is taken by force of the king's writ *de excommunicato capiendo*, is not bailable. For in ancient times men were excommunicated but for heresies, or other heinous causes of ecclesiastical cognizance, and not for small or petty causes; and therefore in those cases the party was not bailable by the sheriff or gaoler without the king's writ: but if the party offered sufficient caution *de parendo mandatis ecclesiæ in forma juris*, then should the party have the king's writ to the bishop to accept his caution, and to cause him to be delivered: And if the bishop will not send to the sheriff to deliver him, then shall he have a writ out of the chancery to the sheriff for his delivery: Or if he be excommunicated for a temporal cause, or for a matter whereof the ecclesiastical court hath no cognizance, he shall be delivered by the king's writ without any satisfaction. 2 *Inst.* 189.

Persons excommunicate.

12. *For manifest offences.*] Which seems to be understood of inferior crimes of an enormous nature under the degree of felony; as dangerous riots savouring of high treason, exorbitant rescouses, misprision of treason, præmunire, maim, and such like heinous offences. Yet it seems to be in a great measure left to discretion, to judge in what cases their crime is so flagrant and enormous that they ought not to have the benefit of it. 2 *Haw. c.* 15. § 45.

Enormous offences.

13. *Or for treason touching the king himself.*] By the common law a man accused or indicted of high treason, or of any felony whatsoever, was bailable upon good surety, until he were convicted; for at common law, the gaol was his pledge or surety that could find none. 2 *Inst.* 189.

Treasons.

Shall be in no wise replevisable by the common writ, nor withont writ.] That is, the sheriff shall not replevy them by the common writ *de homine replegiando;* nor without writ, that is, *ex officio:* But all or any of these may be bailed in the king's bench. 2 *Inst.* 189.

Persons bailable.

Next, the act setteth down seven kinds of offenders *that may be bailed:*

Larceny by inquest taken.

1. *Such as be indicted of larceny by inquests taken before sheriffs or bailiffs.*] That is, before sheriffs in their torns, or lords in their leets, or those that have *infangthief* and *outfangthief;* that is, who have the privilege to judge thieves taken within their fee, or thieves dwelling within their manor and taken for felony *out* of their fee. Yet this is expounded that they be of good fame. 2 *Inst.* 190.

Suspicion.

2. *Or of light suspicion.*] But if the presumption be strong, or the defamation great, the justices may refuse to bail them. *Hale's Sum.* 102. And this is expounded also that they be of good fame. 2 *Inst.* 190.

Petit larceny.

3. *Or for petit larceny that amounteth not above the value of* xii*d. if they were not guilty of some other larceny aforetime.*] This act divideth larceny into two kinds; grand larceny, when the thing stolen is above the value of xii*d.*; and petit larceny, when it is of the value of xii*d.* or under. 2 *Inst.* 189.

It seems to be agreed that there is no necessity that such persons be of good reputation; yet upon the construction of the whole statute, if such persons be taken with the manner, or confess the fact, or their crime be otherwise open and manifest, it seems that they ought not to be bailed; but if there be any colour of probability for their innocence, it seems most agreeable to the intention of the statute to bail them. 2 *Haw.* c. 15. § 50.

Receiving felons.

4. *Or guilty of receipt of felons.*] These are accessaries after the fact. 2 *Hale,* 134.

Aiding felons.

5. *Or of commandment or force or of aid in felony done.*] These are accessaries before the fact. 2 *Hale,* 134.

But accessaries to felonies are not to be bailed, unless they be of good reputation: And it seems at this day to be settled that where there are strong presumptions of guilt, such accessaries are not bailable by this statute. 2 *Haw.* c. 15. § 53.

Trespasses.

Or guilty of some other trespass for which one ought not to lose life or member.] But it seems reasonable to qualify the generality of this expression with this limitation, that such accusation ought to be either on a light suspicion, or else that the offence be inconsiderable, or that it be not excluded from bail by some special act of parliament. 2 *Haw.* c. 15. § 45. 2 *Hale,* 135.

Persons appealed by a provor after his death.

7. *And a man appealed by a provor after the death of the provor if he be no common thief nor defamed.*] And, by parity of reason, he may be bailed if the approver waive his appeal, or be vanquished. 2 *Haw.* c. 15. § 43.

Taking insufficient bail.

Be let out by sufficient surety.] If a justice take insufficient surety, and the party appear not, he is fineable by the judge of assize. *Hale's Sum.* 97. But if the prisoner appear thereupon, the justice is safe. 2 *Haw.* c. 15. §. 6.

And if a person, who has power to take bail, be so far imposed upon, as to suffer a prisoner to be bailed by insufficient persons, it is said, that either he, or any other person who hath power to

bail him, may require the party to find better sureties, and to enter into a new recognizance with them, and may commit him on his refusal, for that insufficient sureties are no sureties. 2 *Haw. c.* 15. § 4.

Bail may be examined on oath.

And the person who is to take the bail may examine them on their oaths concerning their sufficiency. 2 *Haw. c.* 15. § 4. 2 *Hale*, 125.

Number of sureties, and amount.

No person ought in any case to be bailed for felony by less than two; and it is said to be the practice of the K. B. not to admit any person to bail upon a *habeas corpus*, on a commitment for treason or felony without four sureties. The only sure way of proceeding in this case is to take care that every one of the bail be of ability sufficient to answer the sum in which they are bound, which ought never to be less than 40*l*. for a capital crime, but may be as much higher as the justices in discretion shall think fit to require upon consideration of the ability and quality of the prisoner, and the nature of the offence. 2 *Haw. c.* 15. § 4.

Stat. 3 Ed. 1. c. 15. extends only to bail in criminal cases.

It is to be observed that the above statute extends only to bail in criminal offences, and therefore gives no power at all to justices of the peace to bail any persons on process in civil actions, or for contempts to superior courts. 2 *Haw. c.* 15. § 64.

There are furthermore many statutes which prohibit bail and mainprize in very many cases, and allow the same in many others, which are interspersed among the several titles which treat of those matters.

And where a statute ordaineth that an offender shall be imprisoned at the king's will or pleasure, there the prisoner cannot be bailed till he hath redeemed his liberty by such fine or ransom as shall be assessed by the king's justices in his courts. *Dalt. c.* 167. p. 294, 295.

And those who, on their examination, own themselves guilty of a felony alleged against them, and are charged in their *mittimus* with the felony so confessed, seem to be excluded from bail; for *bail is only proper where it stands indifferent whether the party be guilty or innocent of the accusation against him*. 2 *Haw. c.* 15. § 40.

Although a person be committed to be detained without bail or mainprize, yet if the offence be by law bailable, he that hath power of bailing may bail him. 2 *Hale*, 135.

V. Who may bail, and the Manner of it.

By the common law.

By the common law the sheriff and every constable, being conservators of the peace, might have bailed one suspected of felony; but this authority is transferred from them to the justices of the peace by several statutes. *Lamb.* 15.

By two justices.

And it seems to be a good general rule that so far as any persons are judges of any crime, so far they have power of bailing a person indicted before them of such crime; and upon this ground it seems clear that any two justices (1 *Q.*) may of *common right* bail persons indicted at the sessions, for that any two such justices may hear and determine the indictment.

By one justice.

Also it hath been holden that any one justice hath the like power; and this seems to be implied by the statute of 1 *R.* 3. *c.* 3. which giving one justice

power of bailing persons arrested for felony, *in like form as if such persons had been indicted at the sessions*, clearly supposes, that if such persons had been indicted at the sessions, they might have been bailed by any one justice. And if any one justice had such power before the statute specially relating to the power of justices in granting bail, it seems that he hath still the same power in relation to persons so indicted of any bailable crime under the degree of *felony*, because the said statutes seem not to restrain him in any such case, under the degree of felony, from any power which he lawfully might claim before. 2 *Haw.* c. 15. § 54.

One justice may bail for any crime *under* the degree of felony.

But it seems difficult to maintain the power of one justice to bail a person for any crime *before* indictment, unless by some statute it be limited to the conusance of one justice, or unless it be an offence directly tending to the breach of the peace, the bailing of persons for which seems properly to come under their conusance as conservators of the peace. 2 *Haw.* c. 15. § 62.

And Mr. *Dalton* says, if it be not in case of felony, it seemeth that any one justice alone may bail a prisoner, except where it is otherwise ordered in particular instances by some special statute. *Dalt.* c. 12.

And it seems to be agreed that any one justice might always in his discretion either bail or imprison one who has given another a dangerous wound, according as it shall appear from the whole circumstances that the party is most likely to live or die; for that every such justice being a principal conservator of the peace, the offence at present being only an enormous breach thereof, and no felony, seems properly to come under his conusance. 2 *Haw.* c. 15. § 54.

1 & 2 P. & M. c. 13. Persons arrested for manslaughter, or felony, not bailable but in open sessions, excepting by two justices.

But by stat. 1 & 2 *P. & M.* c. 13. § 3. it is enacted, "That any person or persons arrested for *manslaughter* or *felony*, or *suspicion* of *manslaughter* or *felony*, being bailable by the law, shall not be let to bail or mainprize by any justices of peace, if it be not in open sessions, except it be by two justices of peace at the least (*a*) (1 *Q.*), and the same justices to be present together at the time of the said bailment or mainprize; which bailment or mainprize they shall certify in writing subscribed or signed with their own hands, at the next general gaol-delivery to be holden within the county where the said person or persons shall be arrested or suspected."

§ 4. "And that the said justices, or one of them being of the quorum, when any such prisoner is brought before them for any manslaughter or felony, before any bailment or mainprize, shall take the examination of the said prisoner, and information of them that bring him, of the fact and circumstances thereof, and the same, or as much thereof as shall be material to prove the felony, shall put in writing, before they make the same bailment; which said examination, together with the said bailment, the said justices shall certify at the next general gaol-delivery to be holden within the limits of their commission."

(*a*) It appears perfectly clear from this stat. (and from the authorities which have been cited) that one justice alone cannot bail, or set at large upon recognizance a person arrested upon a charge of *felony*, or suspicion thereof; but that such justice must commit him, (assuming a felony to have been proved,) unless he be bailed by two justices, or by the court of quarter sessions, under the powers of this statute. *Ed.*

§ 5. And the said justices shall have authority to bind all such by recognizance or obligation, as do declare any thing material to prove the offence, to appear at the next general gaol-delivery to give evidence against the party on his trial; and shall certify the same in like manner.

1&2 P.&M. c. 13.

§ 5. And any justice offending contrary to this act shall on due proof by examination, be fined by the judges of assize.

Penalty of any justice omitting his duty.

§ 6. But in *London*, *Middlesex*, and in other cities and towns corporate, justices may let prisoners to bail, as they might before this act; but when they do bail, they are to take and certify the bail and examination as is here directed.

VI. Requiring excessive Bail.

By the Declaration of Rights, stat. 1 W. *sess.* 2. *c.* 2. excessive bail ought not to be required.

VII. Denying Bail where it ought to be granted.

To refuse bail where the party ought to be bailed (the party offering the same) is a misdemeanor punishable not only by the suit of the party, but also by indictment. 2 *Haw. c.* 15. § 13. *Hale's Sum.* 97.

VIII. Granting Bail where it ought to be denied.

Admitting bail where it ought not is punishable by the judges of assize by fine; or punishable as a negligent escape at common law. *Hale's Sum.* 97.

If the keeper of a prison bail any not bailable, he shall lose his fee and office; if another officer, he shall have three years' imprisonment, and make fine at the king's pleasure.

3 Ed. I. c. 15.

A justice of *Surry* committed a man on suspicion of stealing a mare, and bound over the owner to prosecute. Afterwards upon examining two other persons, he admitted the party to bail. The prosecutor appeared at the assizes, and found a bill; but the party accused did not appear. And the court granted an information against the justice, declaring they should not have bailed the man themselves. *R.* v. *Clarke*, 2 *Stra.* 1216.

Information granted against a justice for bailing a felon.

"If any justice of the peace shall take bail where he ought not, or wittingly or willingly take insufficient bail, and the party appear not, the said justice not only to be proceeded against according to law, but likewise to be complained of to the lord chancellor, that he may be turned out of his commission." *6th Order of the Judges to be observed by Justices of the Peace, O. B.* 16 *C.* 2. *From Kelyng's Reports*, p. 3.

IX. Of Bail by Writ of Habeas Corpus.

If bail cannot otherwise be obtained, the law hath provided a remedy in most cases by the *habeas corpus* act, 31 *C.* 2. *c.* 2. The substance of which is briefly this:

31 C. 2. c. 2.

If the commitment be for any crime, unless for treason or felony plainly and specially expressed in the warrant of commitment; also if any person be committed and charged as accessary

1 C.2. c.2.

before the fact to any petty treason or felony, or upon suspicion thereof, or with suspicion of petty treason or felony, which petty treason or felony shall be plainly and specially expressed in the warrant of commitment; in such cases, the person shall not be bailed on a writ of *habeas corpus;* otherwise he may be bailed. § 2, 3. 21.

§ 7. Also if a person be committed for treason or felony especially expressed, yet if he shall, in open court, the first week of the term, or first day of assize, petition to be tried, and shall not be indicted some time in the next term or assize after the commitment, he shall upon motion the last day of the term or assize be bailed, unless it shall appear to the judge upon oath that the king's witnesses could not be produced within that time, and then if he be not tried in the second term or assize, he shall be discharged.

Penalty upon officers.

§ 5. If any officer or officers, his or their under-officer or under-officers, under-keeper or under-keepers, or deputy, shall, upon demand made by the prisoner or person in his behalf, refuse to deliver, or within six hours after demand, shall not deliver to the person so demanding, a true copy of the warrant of commitment, all and every the head-gaoler and keepers of such prisons, and such other person in whose custody the prisoner shall be detained, his executors or administrators, shall forfeit to the prisoner or party grieved, his executors or administrators, the sum of 100*l.* for the first offence, and 200*l.* for the second.

The construction of this section is, that if the governor be present, there is then no deputy or under-keeper, on whom a service of the demand can be made; but if the governor be not present, then the deputy may be served: and if the deputy have no deputy, then in the absence of the deputy, service may be on the turnkey, or may be left at the gaol, for it is the duty of the governor to leave some person in his place. But if the gaoler be in the gaol and accessible, the demand must be made on him: if he be not accessible, it may be on the deputy. And at all events, the demand should be served in such a way that the person to whom it was delivered should understand its nature; and where the principal is (as in this case he was) within the gaol, some pains should be taken that it should come to his hands. *Huntley* v. *Luscombe*, *M.* 42. *G.* 3. 2 *Bos.* & *Pull.* 530.

31 C.2. c.21.

By stat. 31 *C.* 2. *c.* 21. § 3. The application is to be made in writing by the prisoner or any person for him, attested and subscribed by two witnesses who were present at the delivery thereof to the court of chancery, king's bench, common pleas, or exchequer, or if out of term time, to the lord chancellor or one of the judges; and a copy of the warrant of commitment shall be produced before them, or oath made that such copy was denied.

§ 4. But if any person had wilfully neglected by the space of two terms to apply for his enlargement, he shall not have an *habeas corpus* granted in the vacation.

§ 10. Upon proper application, the lord chancellor or judges respectively, shall award an *habeas corpus* under the seal of the court, on pain of 500*l.* to be marked in this manner, *Per statutum tricesimo primo Caroli secundi regis,* and signed by the person that awards the same; and shall be directed to the officer or keeper, returnable *immediatè.*

§ 2. And the charges of bringing the prisoner shall be ascertained by the judge or court that awarded the writ, and indorsed thereon not exceeding 12*d.* a mile. 31 C.2. c.21.

§ 2. Then the writ shall be served on the keeper, or left at the gaol with any of the under officers; and the charges so indorsed shall be paid or tendered to him, and the prisoner shall give bond to pay the charges of carrying him back, if he shall be remanded, and that he will not make any escape by the way.

§ 2. This done, the officer shall, within three days after service (if it be within twenty miles), return the writ and bring the body, and shall then likewise certify the true cause of the imprisonment; if above twenty miles and less than a hundred, then within ten days; if above a hundred, then within twenty days; on like pain as before, *viz.* §5. p. 258.

§ 18. But after the assizes are proclaimed for the county where the prisoner is detained, he shall not be removed, but before the judge of assize.

§ 3. Then, if it shall appear to the said lord chancellor or judges that the prisoner is detained on a legal process, order, or warrant, out of some court that hath jurisdiction of criminal matters, or by warrant of a judge or justice of the peace for matters, for which by law he is not bailable; in such case the prisoner shall not be discharged.

§ 3. If he shall be discharged, he shall thereupon enter into recognizance to appear on his trial; and the writ and return thereof and recognizance shall be certified into the court where the trial must be.

§ 8. But persons charged in debt, or other action, or with process in any civil cause, after their discharge for a criminal offence, shall be kept in custody for such other suit.

§ 6. And persons so set at large shall not be recommitted for the same offence, unless by order of court, on pain of 500*l.* to the party grieved.

This is a remedial act, and indeed the most highly remedial act which stands upon the statute book. But in respect to the penal part, the most remedial act may contain penal clauses. *Per Chambre* J. *2 Bos. & Pull.* 539.

Two things I shall observe upon this statute:

1. That although the constable by his own authority, without any warrant of commitment, may carry offenders to gaol, and this was the method of securing prisoners before there were any justices of the peace, yet since the institution of the office of justices of the peace, it is better that they be carried before a justice, to be sent by him to gaol by warrant of commitment; otherwise they have a right to be bailed upon this act, whatever the offence may be.

2. That the warrant of commitment ought to set forth the cause specially; that is to say, not for treason, or felony in general, but treason *for counterfeiting the king's coin*, or felony *for stealing the goods of such an one of such a value*, and the like; that so the court may judge thereupon, whether or not the offence be such for which a prisoner ought to be admitted to bail.

The court of King's Bench (or any judge thereof in time of vacation) may bail for any crime whatsoever, be it treason, murder, or

any other offence according to the circumstances of the case. 4 *Bla. Com.* 299. 2 *Haw. c.* 15. § 77.

This court (K. B.) has undoubtedly a discretionary power to bail in all cases whatsoever. *Per* Ld. *Mansfield* C. J. *Rudd's case,* 1 *Cowp.* 333.

A warrant of commitment for felony must contain the species of felony. *Vide per Pratt* C. J. 2 *Wils.* 158.

But although a warrant of commitment be defective or informal, yet if upon the depositions returned, the court see that a felony has been committed, and that there is reasonable ground of charge against a prisoner, they will not bail, but remand him. *Rex* v. *Marks and others,* 3 *East,* 157. *Rex* v. *Horner, Cald.* 295. *S. P.*

Where it appears to the court of K. B. that a prisoner ought to be bailed for felony, if he be unable to defray the expences of being brought to *Westminster* for that purpose, they will grant a rule to shew cause why he should not be bailed by a magistrate in the country, with a *certiorari* to return the depositions before them. *Rex* v. *Jones, M.* 58 *Geo.* 3. 1 *B.* & *A.* 209. N. B. This was a case of manslaughter. The rule was afterwards made absolute.

43 G. 3. c. 140. Any judge of the courts at Westminster may award a writ of *habeas corpus* for bringing up prisoners for trial or examination before courts-martial, commissioners of bankrupt, &c.

By stat. 43 *Geo.* 3. *c.* 140., after reciting that "Whereas writs of *habeas corpus* have been frequently awarded by the judges of H. M.'s courts of record at *Westminster,* for bringing persons detained in custody under civil or criminal process before magistrates or courts of record as well for trial as for examination touching matters depending before such magistrates or courts respectively (*a*): but doubts have arisen whether such judges have power to award writs of *habeas corpus* for bringing persons detained as aforesaid before courts martial, commissioners of bankrupt, commissioners for auditing the public accounts, or other commissioners acting under commission or warrant from H. M.; and whereas it is expedient to make provision for bringing prisoners before such courts martial or commissioners for the purposes hereinbefore mentioned, Enacts, That any judge of the courts at *Westminster* may award a writ of *habeas corpus* to bring any prisoner, in any gaol in *England,* before a court-martial, commissioners of bankrupt, commissioners for auditing the public accounts, or other commissioners acting by virtue of any commission or

(*a*) The Court of K. B. will grant a *habeas corpus* to the Warden of the Fleet, to take the body of a debtor confined there, before a magistrate, to be examined from time to time respecting a charge of felony or misdemeanor. *Ex parte Griffiths, E.* 1822. 5 *B.* & *A.* 730. *Chitty* moved for a writ of *habeas corpus* to be directed to the Warden of the Fleet, commanding him to carry the body of *G.* before the Lord Mayor or some other justice of the city of *London,* at the Mansion House, there from day to day to be examined touching a charge of felony and misdemeanor. It appeared that a warrant had been obtained from the Lord Mayor against *G.*, who had been a master of a ship, for the purpose of proceeding to convict him of the offence of refusing to deliver up the certificate of registry, pursuant to the stat. 34 *G.* 3. *c.* 68. § 18. (since *repealed* by 4 *G.* 4. *c.* 41. § 1. see now 43 *G.* 3. *c.* 61. § 20. Ships,) and in order to enable the owner to obtain a registry *de novo* of the ship, if necessary. *G.* being, however, at this time a prisoner in the Fleet for debt, there was no power of taking him under the warrant, (see *R.* v. *Woodham, Stra.* 828.) unless the Court granted this writ. The Court thought it a proper case for their interference, and, thereupon, directed the writ to issue.

warrant from H. M.; in like manner as they award such writs to bring persons detained in gaol before magistrates, or courts of record.

44 G. 3. c. 102. Any judge of the superior courts in England or Ireland may award writs of *habeas corpus* for bringing prisoners before courts of record to be examined as witnesses.

By stat. 44 *Geo.* 3. *c.* 102. Any judge of the courts of K. B. or C. P. of *England* and *Ireland* respectively, or any baron of the court of exchequer of the degree of the coif in *England*, or any justice of O. and T. or gaol delivery, being such judge or baron aforesaid, may, at his discretion, award a writ of *habeas corpus*, for bringing any prisoner detained in any gaol or prison before any of the said courts, or any sitting of *nisi prius*, or before any other court of record, to be there examined as a witness, and to testify the truth before such courts, or any other grand, petit, or other jury, in any causes or matters, civil or criminal, whatsoever, which now are or hereafter shall be depending, or to be enquired into or determined in any of the said courts.

In Wales.

By § 2. The like authority is vested in every justice of great session in *Wales*, and in the county palatine of *Chester*, within the limits of his jurisdiction.

56 G. 3. c. 100.

The privileges of the famous act of *habeas corpus* before mentioned, which (as *De Lolme*, p. 191., observes,) "is considered in *England* as the second great charter, and has extinguished all the resources of oppression," have been still further extended by stat. 56 *Geo.* 3. *c.* 100. intituled "An Act for more effectually securing the liberty of the subject," which after reciting that "whereas the writ of *habeas corpus* hath been found by experience to be an expeditious and effectual method of restoring any person to his liberty, who hath been unjustly deprived thereof: and whereas extending the remedy of such writ, and enforcing obedience thereunto, and preventing delays in the execution thereof, will be advantageous to the public: and whereas the provisions made by an act passed in *England* in the thirty-first year of king *Charles* the Second, intituled '*an act for the better securing the liberty of the subject, and for prevention of imprisonment beyond the seas,*' and also by an act passed in *Ireland* in the twenty-first and twenty-second years of His present Majesty, intituled '*an act for better securing the liberty of the subject,*' only extend to cases of commitment or detainer for criminal or supposed criminal matter;" it is Enacted, "that where any person shall be confined or restrained of his or her liberty (otherwise than for some criminal or supposed criminal matter, and except persons imprisoned for debt or by process in in any civil suit) within that part of *G. B.* called *England*, dominion of *Wales*, or town of *Berwick-upon-Tweed*, or the isles of *Jersey*, *Guernsey*, or *Man*, it shall and may be lawful for any one of the barons of the exchequer, of the degree of the coif, as well as for any one of the justices of one bench or the other; and where any person shall be so confined in *Ireland*, it shall and may be lawful for any one of the barons of the exchequer, or of the justices of one bench or the other in *Ireland*; and they are hereby required, upon complaint made to them by or on the behalf of the person so confined or restrained, if it shall appear by affidavit or affirmation (in cases where by law an affirmation is allowed) that there is a probable and reasonable ground for such complaint, to award in vacation time, a writ of *habeas corpus ad subjiciendum*, under the seal of such court, whereof he or they shall then be judges or one of the judges, to be directed to the person or per-

56 G.3. c.100.

sons in whose custody or power the party so confined or restrained shall be, returnable immediately before the person so awarding the same, or before any other judge of the court under the seal of which the said writ issued."

on-obedience to such writ, to be a contempt of court, and punishable accordingly.

§ 2. Enacts, "That if the person or persons to whom any writ of *habeas corpus* shall be directed according to the provision of this act, upon service of such writ, either by the actual delivery thereof to him, her or them, or by leaving the same at the place where the party shall be confined or restrained, with any servant or agent of the person or persons so confining or restraining, shall wilfully neglect or refuse to make a return or pay obedience thereto, he, she, or they shall be deemed guilty of a contempt of the court, under the seal whereof such writ shall have issued; and it shall be lawful to and for the said justice or baron, before whom such writ shall be returnable, upon proof made by affidavit of wilful disobedience of the said writ, to issue a warrant under his hand and seal, for the apprehending and bringing before him, or before some other justice or baron of the same court, the person or persons so wilfully disobeying the said writ, in order to his, her, or their being bound to the king's majesty, with two sufficient sureties, in such sum as in the warrant shall be expressed, with condition to appear in the court of which the said justice or baron is a judge, at a day in the ensuing term to be mentioned in the said warrant, to answer the matter of contempt with which he, she, or they are charged; and in case of neglect or refusal to become bound as aforesaid, it shall be lawful for such justice or baron to commit such person or persons so neglecting or refusing, to the jail or prison of the court of which such justice or baron shall be a judge, there to remain until he, she, or they shall have become bound as aforesaid, or shall be discharged by order of the court in term time, or by order of one of the justices or barons of the court in vacation; and the recognizance or recognizances to be taken thereupon shall be returned and filed in the same court, and shall continue in force until the matter of such contempt shall have been heard and determined, unless sooner ordered by the court to be discharged: provided, that if such writ shall be awarded so late in the vacation by any one of the said justices or barons, that, in his opinion, obedience thereto cannot be conveniently paid during such vacation, the same shall and may, at his discretion, be made returnable in the court of which the said justice or baron shall be a justice or baron, at a day certain in the next term; and the said court shall and may proceed thereupon, and award process of contempt in case of disobedience thereto, in like manner as upon disobedience to any writ originally awarded by the said court: provided also, that if such writ shall be awarded by the court of king's bench, or the court of common pleas, or court of exchequer, in the said countries respectively, which last-mentioned court shall have like power to award such writs as the respective courts of king's bench and common pleas in each of the said countries now have, in term, but so late that, in the judgment of the court, obedience thereto cannot be conveniently paid during such term, the same shall and may, at the discretion of the said court, be made returnable at a day certain in the then next vacation, before any justice or baron of the degree of the coif, or if in *Ireland*, before any justice or baron of the same court, who shall

Judges to make writs of *habeas corpus* issued in vacation, returnable in court in the next term.

Courts to make writs issued in term, returnable in vacation.

and may proceed thereupon, in such manner as by this act is directed concerning writs issuing in and made returnable during the vacation."

56 G.3. c.100.

§ 3. Enacts, "That in all cases provided for by this act, although the return to any writ of *habeas corpus* shall be good and sufficient in law, it shall be lawful for the justice or baron, before whom such writ may be returnable, to proceed to examine into the truth of the facts set forth in such return, by affidavit or by affirmation (in cases where an affirmation is allowed by law) and to do therein as to justice shall appertain; and if such writ shall be returned before any one of the said justices or barons, and it shall appear doubtful to him on such examination, whether the material facts set forth in the said return, or any of them, be true or not; in such case it shall and may be lawful for the said justice or baron to let to bail the said person so confined or restrained, upon his or her entering into a recognizance with one or more sureties, or in case of infancy or coverture, or other disability, upon security by recognizance, in a reasonable sum, to appear in the court of which the said justice or baron shall be a justice or baron, upon a day certain in the term following, and so from day to day as the court shall require, and to abide such order as the court shall make in and concerning the premises; and such justice or baron shall transmit into the same court the said writ and return, together with such recognizance, affidavits, and affirmations; and thereupon it shall be lawful for the said court to proceed to examine into the truth of the facts set forth in the return, in a summary way by affidavit or affirmation (in cases where by law, affirmation is allowed), and to order and determine touching the discharging, bailing, or remanding the party."

Judges to inquire into the truth of facts contained in return.

Judge to bail on recognizance to appear in term, &c.

§ 4. Enacts, "That the like proceeding may be had in the court for controverting the truth of the return to any such writ of *habeas corpus*, awarded as aforesaid, although such writ shall be awarded by the said court itself, or be returnable therein."

Court may controvert the truth of the return.

§ 5. Enacts, "That a writ of *habeas corpus*, according to the true intent and meaning of this act, may be directed and run into any county palatine or cinque port, or any other privileged place within that part of *G. B.* called *England*, dominion of *Wales*, and town of *Berwick-upon-Tweed*, and the isles of *Jersey*, *Guernsey*, and *Man*, respectively; and also into any port, harbour, road, creek, or bay, upon the coast of *England* or *Wales*, although the same should lie out of the body of any county; and if such writ shall issue in *Ireland*, the same may be directed and run into any port, harbour, road, creek or bay, although the same should not be in the body of any county; any law or usage to the contrary in anywise notwithstanding."

Writ may run into counties palatine, cinque ports, and privileged places, &c.

§ 6. Enacts, "That the several provisions made in this act, touching the making writs of *habeas corpus*, issuing in time of vacation returnable into the said courts, or for making such writs awarded in term time, returnable in vacation, as the cases may respectively happen, and also for making wilful disobedience thereto a contempt of the court, and for issuing warrants to apprehend and bring before the said justices or barons, or any of them, any person or persons wilfully disobeying any such writ; and in case of neglect or refusal to become bound as aforesaid, for committing the person or persons so neglecting or refusing to jail

Process of contempt may be awarded in vacation against persons disobeying writs of *habeas corpus* in cases within stat. 31 Car. 2. c. 2.

56 G.3. c.100. as aforesaid, respecting the recognizances to be taken as aforesaid, and the proceeding or proceedings thereon, shall extend to all writs of *habeas corpus* awarded in pursuance of the said act, passed in *England* in the thirty-first year of the reign of king *Charles* the Second, or of the said act passed in *Ireland* in the twenty-first and twenty-second years of his present majesty, and hereinbefore recited, in as ample and beneficial a manner as if such writs and the said cases arising thereon had been hereinbefore specially named and provided for respectively."

X. Acknowledging Bail in another Man's Name.

21 J.1. c.26. By stat. 21 *J.* 1. *c.* 26. *If any person shall acknowledge, or procure to be acknowledged, any bail in the name of any other not privy to the same; he shall be guilty of felony without benefit of clergy.*

Feigning Bail. *In the name of any other.*] Two people put in bail in feigned names, and because they were no such persons, they could not be prosecuted for personating bail on this statute. So the court ordered them and the attorney to be set in the pillory; which was done accordingly. *Anon.* 1 *Stra.* 384.

Bail taken before a judge is not within the statute till it be filed of record. 1 *Hale*, 696. But it is within the following statute of 4 *W. c.* 4. by which it is enacted, that *any who shall personate another before those who have authority to take bail, so as to make him liable to the payment of any sum of money in that suit or action, shall be guilty of felony* (but within clergy).

Form of Bail.

Westmorland. *BE it remembered, that on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— A. O. *of* ——— *yeoman,* A. B. *of* ——— *yeoman, and* B. B. *of* ——— *yeoman, came before us* John Moore, *esquire, and* Richard Burn, *doctor of laws, two of his majesty's justices of the peace in and for the said county, one whereof is of the quorum, and severally acknowledged themselves to owe to our said lord the king, that is to say, the said* A. O. 20*l.* *and the said* A. B. *and* B. B. 10*l.* *each, to be respectively levied of their lands and tenements, goods and chattels, if the said* A. O. *shall make default in the performance of the condition indorsed* [or *underwritten*].

John Moore,
Richard Burn.

The condition of this recognizance is such, that if the within [*above*] *bound* A. O. *shall personally appear before the justices of our sovereign lord the king assigned to keep the peace within the said county, and likewise to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, at the next general quarter sessions of the peace* [or, *before his majesty's justices of gaol delivery, at the next general gaol delivery*] *to be holden in and for the said county, then and there to answer to our said sovereign lord the king, for and concerning the felonious taking and stealing of* ——— *the property of* A. M. *of* ——— *yeoman, with the suspicion thereof the said* A. O. *stands charged before us the said justices, and to do and receive what shall by the court be then*

and there enjoined him, and shall not depart the court without licence, then the above [within] written recognizance shall be void.

Or if the Party is in Prison, and so absent, Lord *Hale* says, this is the true Form from *Lambard.*

Westmorland. *BE it remembered, that on the ——— day of ——— in the ——— year of the reign of ——— before us* John Moore, *esquire, and* Richard Burn, *doctor of laws, two of the justices of our said lord the king, assigned to keep the peace within the said county, and one of us of the quorum, at* Grimeshill *in the said county, did come* A. B. *and* B. B. *of ——— in the said county yeomen, and took in bail until the next gaol delivery to be holden in the said county, one* A. O. *of —— labourer, taken and detained in prison for suspicion of a certain felony in stealing ——— the property of ——— and took upon themselves each of the said* A. B. *and* B. B. *under the penalty of* 20*l. of good and lawful money of* Great Britain, *of the goods and chattels, lands and tenements, of them and each of them, to the use of our said lord the king, his heirs and successors, to be levied, if the said* A. O. *shall not personally appear at the said next gaol delivery, before the justices of our said lord the king, assigned to deliver the said gaol, to stand to right concerning the felony aforesaid, according to the law and custom of* England. *Given under our seals,* &c.

[But the seal need not be, for they are judges of record; only it may be barely subscribed by them: or thus,]

Taken and acknowledged the day and year above written, before us the abovesaid
John Moore,
Richard Burn.

And hereupon a Warrant issues for his Deliverance, thus:

Westmorland. JOHN MOORE, *esquire, and* Richard Burn, *doctor of laws, two of the justices of ——— and one of us of the quorum, to the keeper of his majesty's gaol at ——— in the said county, greeting. Forasmuch as* A. O. *of ——— labourer, hath before us found sufficient sureties to appear before the justices of gaol delivery at the next general gaol delivery to be holden in the said county, to answer to such things as shall be then on the behalf of our said sovereign lord objected against him, and namely, to the felonious taking of ——— (for the suspicion whereof he was taken and committed to your said gaol); We command you on the behalf of our said sovereign lord, that if the said* A. O. *do remain in your said gaol for the said cause, and for none other, then you forbear to detain him any longer, but that you deliver him thence, and suffer him to go at large, and that upon the pain that will thereon ensue. Given under our seals at* Orton *in the said county, the ——— day of ——— in the year ———.*

Lord *Hale* says, the advantage of this latter kind of bail is this, that it is not only a recognizance in a sum certain, but also a real bail, and they are his keepers, and may be punished by fine beyond the sum mentioned in the recognizance, if there be cause;

and may reseize him if they doubt his escape, and have him committed, and so be discharged of the recognizance. 2 *Hale*, 127.

Bank Notes, &c. See Larceny, Vol. III.

Banks, destroying.

[22 H. 8. c. 11.—6 G. 2. c. 37.—10 G. 2. c. 32.—42 G. 3. c. 32. —4 G. 4. c. 46.]

22 H. 8. c. 11. Powdike.

BY stat. 22 *H.* 8. *c.* 11. every perverse and malicious person cutting down and breaking up of any part of the dike called *New Powdike* in *Marshland*, in the county of *Norfolk*, and the broken dike called *Old Field Dike*, by *Marshland*, in the isle of *Ely*, or any other bank being parcel of the rind and uppermost part of the said country of *Marshland*, made for the defence and salvation of the said country of *Marshland*, shall be adjudged guilty of felony. And the sessions may determine the same.

6 G. 2. c. 37. Sea and river banks.

By stat. 6 *G.* 2. *c.* 37. § 5. If any person shall unlawfully and maliciously break down or cut down the bank or banks of any river, or any sea bank, whereby any lands shall be overflowed or damaged; he shall be guilty of felony without benefit of clergy.

4 G. 4. c. 46. Transportation for life or years; imprisonment.

But by stat. 4 *G.* 4. *c.* 46. § 1. So much of stat. 6 *G.* 2. *c.* 37. *viz.* § 5. as excludes the benefit of clergy from persons convicted of the felony thereby created is repealed: and from and after the passing of this act, *viz.* 4th of *July*, 1823, any person convicted of the said felonies, or any of them, shall be liable, at the discretion of the court, to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned only, or to be imprisoned and kept to hard labour in the common gaol or house of correction for any term not exceeding seven years.

10 G. 2. c. 32. Piles for securing banks.

And moreover, by stat. 10 *G.* 2. *c.* 32. § 5. If any person or persons shall unlawfully cut off, draw up, or remove and carry away any piles, chalk, or other materials, driven into the ground, and used for the securing any marsh, or sea walls or banks, in order to prevent the lands lying within the same from being overflowed and damaged; on complaint or information thereof made upon oath to any justice residing near the place, such justice shall summon the party complained of, or shall issue his warrant to apprehend and bring such person before him, and upon his appearance, or neglect to appear, shall proceed to examine the fact; and upon due proof thereof made, either by confession, or oath of one witness, shall convict the offender; who shall thereupon forfeit 20*l.* half to the informer, and half to the overseer for the use of the poor, to be levied by distress and sale, together with the charges of the distress and sale; for want of sufficient distress, he shall be committed to the house of correction, to be kept to hard labour for six months.

42 G. 3. c. 32. Banks, &c. near Plymouth.

By stat. 42 *G.* 3. *c.* 32. which is intituled "An act to enable H. M. to grant certain parcels of land, situate between *Great Prince Rock* and the village of *Crab Tree*, called *Tothill Bay*

Bank, and *Lipson Bay*, near to the borough of *Plymouth*, in the county of *Devon*, to certain persons therein named, for the purpose of embanking and preserving the same from the sea," it is enacted, § 46. "That if any person or persons shall wilfully and maliciously break, throw down, damage or destroy any of the banks, mounds, dams, or other works to be erected or made by virtue of this act, every such person shall be deemed guilty of felony, and shall, on being lawfully convicted thereof, be subject to the like pains and penalties, as in cases of felony; and the court by or before whom such person shall be tried and convicted shall have power and authority to cause such person to be punished in like manner as felons are directed to be punished by the laws and statutes of this realm, or in mitigation of such punishment, such court may award such sentence as the law directs in cases of petty larceny." Satisfaction (§ 47.) shall also be made upon damaging works.

42 G. 3. c. 32.

As to destroying bent on the north-west coasts of *England*, see post. tit. Bent.

Banks for Savings.

[57 G. 3. c. 130. — 58 G. 3. c. 48. — 1 G. 4. c. 83. — 5 G. 4. c. 62.]

BY stat. 57 *G.* 3. *c.* 130. intituled "An act to encourage the establishment of Banks for savings in *England*," after reciting that "whereas certain provident institutions or banks for savings have been established in *England*, for the safe custody and increase of small savings belonging to the industrious classes of H. M.'s subjects; and it is expedient to give protection to such institutions and the funds thereby established, and to afford encouragement to others to form the like institutions:" It is enacted, "That if any number of persons who have formed or shall form any society in any part of *England*, for the purpose of establishing and maintaining any institution in the nature of a bank, to receive deposits of money for the benefit of the persons depositing the same, and to accumulate the produce of so much thereof as shall not be required by the depositors, their executors or administrators, to be paid in the nature of compound interest, and to return the whole or any part of such deposit and the produce thereof to the depositors, their executors, or administrators, deducting only out of such produce so much as shall be required to be so retained for the purpose of paying and discharging the necessary expenses attending the management of such institution, according to such rules, orders, and regulations as shall have been or shall be established for that purpose, but *deriving no benefit whatsoever from any such deposit or the produce thereof*, shall be desirous of having the benefit of the provisions of this act, such persons shall cause the rules, orders, and regulations established or to be established for the management of such institution to be entered, deposited, and filed in manner hereinafter directed, and thereupon shall be deemed to be entitled to and shall have the benefit of the provisions contained in this act."

Persons forming societies according to the provisions herein prescribed, entitled to the benefit of this act.

57 G. 3. c. 130.

Rules of the institution to be entered in a book, and a copy deposited with the clerk of the peace.

§ 2. Provided always, "That no such institution shall have the benefit of this act, unless the rules, orders, and regulations for the management thereof shall be entered in a book or books to be kept by an officer of such institution, to be appointed for that purpose, and which book or books shall be open at all seasonable times for the inspection of the persons making deposits in the funds of such institution; and unless such rules, orders, and regulations shall be fairly transcribed on parchment, and such transcript shall be deposited with the clerk of the peace for the county, riding, division, or place wherein such institution shall be established; which transcript shall be filed by such clerk of the peace with the rolls of the sessions of the peace in his custody, without any fee or reward to be paid in respect thereof; but nevertheless nothing herein contained shall extend to prevent any alteration in or amendment of any such rules, orders, or regulations so entered and deposited and filed as aforesaid, or repealing or annulling the same, or any of them, in the whole or in part, or making any new rules, orders, or regulations for the management of any such institution, in such manner as by the rules, orders, and regulations of such institution shall from time to time be provided; but such new rules, orders, or regulations, or such alterations in, or amendments of, former rules, orders, or regulations, or any order annulling or repealing any former rule, order or regulation in the whole or in part, shall not be in force until the same respectively shall be entered in such book or books as aforesaid, and a transcript or transcripts thereof shall be deposited with such clerk of the peace as aforesaid, who shall file the same without fee or reward as aforesaid."

No fee to be taken for enrolment of rules.

58 G. 3. c. 48.

Justices at sessions may reject any rules of the institutions sent to the clerk of the peace.

And by stat. 58 *G.* 3. *c.* 48. § 17. it is enacted, "That whenever a transcript of the rules, orders, and regulations, for the management of any institution requiring the benefit of the act of 57 *G.* 3. and of this act, shall have been or shall be deposited with the clerk of the peace for the county, riding, division, or place wherein such institution shall be established, pursuant to the directions of the said act, such transcript shall be signed by two trustees of such institution, and shall by such clerk of the peace be laid before the justices for such county, riding, division, or place, at the general or quarter sessions next after the time when such transcript shall have been so deposited; and it shall be lawful for such justices then and there present, after due examination thereof, to reject and disapprove of such part or parts thereof as shall be repugnant to the true intent and meaning of the said act and this act, or to allow and confirm the said transcript, or such part or parts thereof as shall be conformable to the true intent and meaning of the said act and this act. Provided always, that the said justices shall signify such rejection or disapproval of any one or more of the rules, orders, and regulations contained in such transcript by the words 'rejected,' or 'disapproved,' written opposite such rule or rules, order or orders, regulation or regulations, and signed by the chairman of such sessions; and such rule or rules, order or orders, regulation or regulations, as shall be so rejected or disapproved of, shall not be in force from the time of such rejection or disapproval: Provided always, that the said clerk of the peace do, within the space of ten days next after such rejection or disapproval, give notice thereof in writing to the two

trustees of such institution by whom the transcript of such rules, orders, and regulations shall be signed as aforesaid."

58 G. 3. c. 48.

And by stat 57 *G*. 3. *c*. 130. § 3. it is enacted, " That no such institution shall have the benefit of this act, unless it shall be expressly provided by the rules, orders, and regulations for the management thereof, that no person or persons being treasurer, trustee, or manager of such institution, or having any control in the management thereof, shall derive any benefit from any deposit made in such institution; but that the persons depositing money therein shall have the sole benefit of such deposits and the produce thereof, save only and except such salaries and allowances or other necessary expences as shall, according to such rules, orders, and regulations, be provided for the charges of managing such institution, and for remuneration to officers employed in the management thereof, exclusive of the treasurer or treasurers, trustee or trustees, or other persons having direction in the management of such institution, who shall not directly or indirectly have any salary, allowance, profit, or benefit whatsoever therefrom, beyond their actual expenses for the purposes of such institution."

57 G. 3. c. 130. Officers not to have any benefit in the institution.

§ 4. Enacts, " That all rules, orders and regulations from time to time made and in force for the management of any such institution as aforesaid, and duly entered in such book or books as aforesaid, and deposited with such clerk of the peace as aforesaid, shall be binding on the several members and officers of such institution, and the several depositors therein and their representatives, all of whom shall be deemed and taken to have full notice thereof, by such entry and deposit as aforesaid; and the entry of such rules, orders, and regulations in such book or books as aforesaid, or the transcript thereof deposited with such clerk of the peace as aforesaid, or a true copy of such transcript examined with the original, and proved to be a true copy, shall be received as evidence of such rules, orders, and regulations respectively in all cases; and no certiorari shall be brought or allowed to remove any such rules, orders, or regulations into any of H. M.'s courts of record; and every copy of any such transcript deposited with any clerk of the peace as aforesaid shall be made without fee or reward, except the actual expense of making such copy; and such copy shall not be subject to any stamp duty."

Rules to be binding.

Copy of transcript deposited with clerk of the peace, Evidence.

No certiorari.

No fees or stamp duties.

§ 5. Enacts, " That in case the managers of any such institution shall receive any deposit of money from or for the benefit of any person under the age of twenty-one years, it shall be lawful for the managers of such institution to pay to such person his or her share and interest in the funds of such institution; and the receipt of such person shall be a sufficient discharge, notwithstanding his or her incapacity or disability in law to act for him or herself."

Savings of minors may be invested.

§ 6. Enacts, " That it shall be lawful for any *friendly society*, established under and by virtue of any act or acts relating to friendly societies, from time to time to subscribe the whole or any part of the funds of such friendly society as they shall from time to time direct, through their treasurer, steward, or other officer or officers, into the funds of any institution which shall take the benefit of this act, and which shall be willing to receive the

Friendly societies may subscribe any portion of their funds into the funds of provident institutions.

57 G.3. c. 130

same, under such terms and conditions as shall be specially provided for that purpose by the rules, orders and regulations of such institution : Provided always, that the receipt or discharge of the treasurer or other officer of such friendly society for the time being, for any money, stock in the public funds, or other security, paid, transferred, or delivered according to the requisition of such treasurer or other officer, apparently authorized to require such payment, transfer, or delivery, shall be a sufficient discharge for the same; and the institution in which such deposit shall be made shall not be responsible for any misapplication of any such money, stock, or security by the person or persons to whom the same shall be so paid, transferred, or delivered, or for any want of authority of the person or persons requiring or receiving such payment, transfer, or delivery." See Vol. II. tit. Friendly Societies.

1 G. 4. c. 83. Charitable institution subscribing funds. 5 G. 4. c. 62.

And by stat. 1 *G.* 4. *c.* 83. § 12. any *charitable institution or society* in *England* might subscribe the whole or any part of their funds into any savings bank with the consent of the majority of the trustees of the latter; but this provision is now repealed by 5 *G.* 4. *c.* 62. § 24.

57 G.3. c. 130. Treasurers, &c. to give security, if required by the general rules.

57 *G.* 3. *c.* 130. § 7. Enacts, " That if any treasurer or treasurers, or other officer or officers, or other person whatever, who shall be intrusted with the receipt or custody of any sum or sums of money subscribed or deposited for the purposes of such institution, or any interest or dividend from time to time accruing thereby, shall be required by the rules or regulations of such institution to become bound with sureties for the just and faithful execution of such office or trust, in such sum or sums of money as shall be required by the rules, orders, and regulations of such institution, such security shall and may be given by bond or bonds to the clerk of the peace for the county, riding, division, or place, or to the town clerk of the place where such institution shall be established for the time being, without fee or reward: and in case of forfeiture it shall be lawful for the persons authorized for that purpose by the rules, regulations, and orders of such institution, to sue upon such bond or bonds in the name of such clerk of the peace or town clerk for the time being, and to carry on such suit at the costs and charges and for the use of the said institution, fully indemnifying and saving harmless such clerk of the peace or town clerk from all costs and charges in respect of such suit; and no bond or other security to be so given shall be subject to or charged or chargeable with any stamp duty whatever."

Effects of institution to be vested in trustees for the time being without fresh assignment;

§ 8. Enacts, " That all monies, goods, chattels, and effects whatever, and all securities for money, or other obligatory instruments and evidences or muniments, and all other effects whatever, and all rights or claims belonging to or had by such institution, shall be vested in the trustee or trustees of such institution for the time being, for the use and benefit of such institution and the respective depositors therein, their respective executors or administrators, according to their respective claims and interests, and, after the death or removal of any trustee or trustees, shall vest in the succeeding trustee or trustees for the same estate and interest as the former trustee or trustees had therein, and subject to the same trusts, without any assignment or conveyance

57 G.3. c.130.

whatever, except the transfer of stocks and securities in the public funds of *G. B.*; and also shall for all purposes of action or suit, as well criminal as civil, in law or in equity, in anywise touching or concerning the same, be deemed and taken to be, and shall in every such proceeding (where necessary) be stated to be, the property of the person or persons appointed to the office of trustee or trustees of such institution for the time being, in his, her, or their proper name or names, without further description; and such person or persons shall and they are hereby respectively authorized to bring or defend, or cause to be brought or defended, any action, suit, or prosecution, criminal as well as civil, in law or equity, touching or concerning the property, right, or claim aforesaid of or belonging to or had by such institution; and such person or persons so appointed shall and may, in all cases concerning the property, right, or claim aforesaid of such institution, sue and be sued, plead and be impleaded, in his, her, or their proper name or names, as trustee or trustees of such institution, without other description; and no such suit, action or prosecution shall be discontinued or abate by the death of such person or persons, or his or their removal from the office of trustee or trustees as aforesaid, but the same shall and may be proceeded in by the succeeding trustee or trustees in the proper name or names of the person or persons commencing the same, any law, usage, or custom to the contrary notwithstanding; and such succeeding trustee or trustees shall pay or receive like costs as if the action or suit had been commenced in his or their name or names, for the benefit of or to be reimbursed from the funds of such institution."

who may bring and defend actions, &c.

§ 9. Enacts, "That it shall not be lawful to and for the trustee or trustees, manager or managers for the time being of any such institution as aforesaid, taking the benefit of this act, at any time to place or deposit any sum of money which shall have been paid to such institution by any depositor, or any interest or profit arising therefrom, in the hands of any banker or bankers, or upon any personal security, except such sums of money as from time to time shall necessarily remain in the hands of the treasurer or treasurers of such institution to answer the exigencies thereof."

Money may be placed out on personal security.

§ 10. Enacts, "That the trustees of any institution which shall take the benefit of this act in manner hereinbefore provided, shall be and they are hereby empowered to pay into the bank of *England* any sum or sums of money, not being less than 50*l.* to the account of the commissioners for the reduction of the national debt, upon the declaration of the trustees of such institution, or any two or more of them, that such monies belong exclusively to the institution for which such payment is intended to be made, whether such monies shall have been deposited therein before the passing of this act, or thereafter shall be deposited therein; and the cashier or cashiers of the bank of *England* are hereby required to receive all such monies, and to place the same into a new and separate account, to be raised in the names of the said commissioners for the time being, in the books of the bank of *England*, to be denominated 'The fund for the banks for savings.'"

Bank of England, on receiving 50*l.* from savings bank, on account of the commissioners for the reduction of the national debt, to open an account called "The Fund for the Banks for Savings."

57 G. 3. c. 130.

Previous to such payment an order shall be produced and a certificate granted.

And by stat. 57 *G.* 3. *c.* 130. § 11., and 58 *G.* 3. *c.* 48. § 1. & 2. (*a*) Previous to any payment being made into the bank of *England* as aforesaid, the person or persons applying for that purpose shall in all cases produce to the officer of the said commissioners, at their office in *London*, an order under the hands of two of the trustees of such institution on account of which such payment is to be made; and on the production of such order to the said officer, he shall grant his certificate; and he was thereupon to grant a debenture.

1 G. 4. c. 83.

But now by stat. 1 *G.* 4. *c.* 83. § 1. After reciting that whereas certain of the provisions contained in stat. 57 *G.* 3. *c.* 130. and stat. 58 *G.* 3. *c.* 48. for amending the said act of the 57 *G.* 3. have been found inconvenient and ineffectual; and it is expedient that other provisions should be made for the like purposes; it is enacted, that from the 1st day of *August*, 1820, "so much and such parts of the said recited acts, or either of them, whereby the issuing of any debenture or debentures by or under the authority of the commissioners for the reduction of the national debt is authorized or required upon the payment of any money into the bank of *England* to the account of the said commissioners by the trustees of any savings bank; and also so much of the said recited acts or either of them, as relates to the renewal of any such debentures, or to the payment of the principal or interest of any such debentures, or any part thereof, or to the transferring of any bank annuities in lieu of paying off the principal and interest of any such debenture or debentures in money, shall, as to any such payments which shall be made into the bank of *England* by the trustees of any savings bank, at any time after the said 1st day of *August*, cease and determine, and shall be and the same is and are hereby repealed."

So much of said acts as relates to the issuing, renewing, or paying debentures in future, repealed.

5 G. 4. c. 62.

All interest on outstanding debentures in England or Ireland shall cease on Nov. 20. 1824.

Stat. 5 *G.* 4. *c.* 62. § 16. Provides and enacts, That all interest upon any debenture or debentures which shall have been issued in *England* or *Ireland*, at any time before 20th *November*, 1824, under any of the herein-before recited acts (*b*), shall cease and determine on and from 20th *November*, 1824, and that no sum or sums of money shall be placed to the credit of any savings bank for interest for any time subsequent to

(*a*) Stat. 58 *G.* 3. c. 48. § 1. repealed the several forms contained in 57 *G.* 3. *c.* 130. § 11. and substituted others contained in Schedule (A.); but by 5 *G.* 4. *c.* 62. § 38. from and after 20th *Nov.* 1824, the schedules annexed to 57 *G.* 3. *c.* 105. for the establishment of banks for savings in *Ireland*, and the several forms in the said schedules contained, marked A. B. C. D. and E., and also the schedule annexed to 58 *G.* 3. *c.* 48. amending 57 *G.* 3. *c.* 130. for the establishment of banks for savings in *England*, and the forms in the said schedules * contained, marked A. B. C. D. E. F 1. F 2. and G., are repealed, and shall be no longer used or applied in the execution of the said recited acts or this act; and from and after 20th *Nov.* 1824, all receipts, orders, certificates, indorsements, accounts, returns, or instruments whatsoever, which shall be required for carrying into execution this act and the several acts hereinbefore recited, or any of them, as amended by this act, shall be made in such form and manner, and containing such particulars, and under such regulations as shall from time to time be directed or required, or approved of by the commissioners for the reduction of the national debt, or their officer or officers.

(*b*) *Viz.* stats. 57 *G.* 3. *c.* 130. 58 *G.* 3. *c.* 48. 1 *G.* 4. *c.* 83.: and 57 *G.* 3. *c.* 105. which with 5 *G.* 4. *c.* 62. § 1—15. applies exclusively to savings banks in *Ireland*.

such 20th day of *November*, 1824, upon or in respect of any such debenture or debentures which may be outstanding on the 20th day of *November*, 1824, any thing in stats. 57 *G.* 3. *c.* 130. 58 *G.* 3. *c.* 48. 1 *G.* 4. *c.* 83. and 57 *G.* 3. *c.* 105. or this act to the contrary notwithstanding.

5 G.4. c.62.

Stat. 1 *G.* 4. *c.* 83. § 2. Enacts, that upon the payment of any sum or sums of money into the bank of *England*, at any time after the said 1st day of *August*, to the account of the commissioners for the reduction of the national debt, by the trustees of any savings bank, under the said recited acts, in manner directed by the said recited acts, and under the provisions of the said recited acts, or either of them, it shall be lawful for the officer of the said commissioners in that behalf, and he is hereby authorised and empowered, to issue, upon every such payment being made, a receipt signed by one of the cashiers of the governor and company of the Bank of *England*, for the amount of such payment, carrying interest at the rate of three-pence *per centum per diem* from the day of such payment inclusive, payable with the principal at the bank of *England*, whenever the same shall be required or drawn for in manner directed by this act; and such receipt shall be dated on the day on which the payment of any such sum or sums of money shall be made respectively; and every such receipt shall be in such form as shall be from time to time directed by the said commissioners; and the principal and interest of all sums mentioned in any such receipt shall be charged and chargeable upon, and the same are hereby charged and made payable out of the monies or funds standing in the names of the said commissioners in the books of the bank of *England*.

1 G. 4. c. 83. On payment of money into the bank by trustees of savings banks to account of commissioners for the reduction of the national debt, their officer shall give a receipt for the same, carrying interest at 3*d.* per cent. per diem chargeable on the stock standing in the names of the said commissioners.

§ 3. Enacts, that all interest which shall become due and payable upon any sum of money, mentioned in any such receipt, upon the 20th day of *November* and the 20th day of *May* in every year next after the date of any such receipt, shall be from time to time calculated and computed by the officer of the said commissioners, and shall in each and every year be placed to the credit of the savings bank on whose account any such sum of money was paid, within 30 days from such 20th day of *November* and 20th day of *May* respectively, and shall be carried to and written on the account of such savings bank, and shall become principal, and shall from thenceforth carry interest as principal money paid into the said bank of *England* on the account of such savings bank; and a receipt, according to such form as the said commissioners shall approve, shall be signed by the officer of the said commissioners, and shall be issued by the said officer half-yearly, within 30 days after such 20th day of *November* and 20th day of *May* (and such receipt shall bear date the 21st day of *November* and 21st day of *May* respectively) for the amount of such interest so credited and made principal as aforesaid, as if the amount thereof had been a payment made by the trustees of such savings bank, to the account of the said commissioners: Provided always, that no interest shall be computed or calculated on the fractional part of a pound, or any sum less than a pound of the half-yearly balance standing in the books of the said commissioners, on account of any savings bank, on any 20th day of *November* or 20th day of *May* respectively: Provided also, that it shall be lawful for the managers and trustees of any such savings bank, if they shall so

Interest on all such sums shall be calculated half-yearly up to 20th Nov. and 20th May, and carried to account of the savings banks as additional principal.

No interest on fractional parts of a pound.

Interest arising to depositors to

1 G.4. c.83.

be calculated twice a year, and carried to their credit as principal.

think fit, to direct that all interest which shall become due and payable to the depositor on any sum of money deposited in such savings bank, shall twice in each and every year be calculated and computed by the trustees of such savings banks, or such person or persons as they shall appoint, and shall be carried to the credit of the person or persons depositing the said sum or sums of money, and shall become principal, and shall from thenceforth carry interest in all respects as other principal money deposited in the said bank, or as if the said sum of interest so calculated had actually been paid to the said depositors, and by them repaid to the said trustee or trustees; any law, statute, or usage to the contrary notwithstanding.

5 G.4. c.62.
Savings banks shall compute interest to 20th May and 20th Nov. half-yearly or yearly.

By stat. 5 *G.* 4. *c.* 62. § 31. For the purpose of rendering the accounts of the several savings banks in *England* and *Ireland* respectively uniform and correspondent with the accounts of the commissioners for the reduction of the national debt, it is enacted, That from and after the 20th day of *November*, 1824, the interest or dividends due to each depositor in each savings bank in *England* and *Ireland* respectively shall be computed half-yearly to the 20th day of *May* and the 20th day of *November*, or yearly to the 20th day of *November* in each year, or up to such period nearest to such 20th day of *May* or 20th day of *November* as such interest shall be payable, according to the rules or regulations of such savings banks respectively, and to no other periods.

1 G.4. c.83.
Before drawing for money, trustees of savings banks shall sign an appointment of an agent to receive the same, which shall be deposited with officer of commissioners for reduction of national debt.

Stat. 1 *G.* 4. *c.* 83. § 4. Enacts, that before any trustees of any savings bank shall, at any time after the said 1st day of *August*, make any order or draft for payment by the said commissioners for the reduction of the national debt, of any sum or sums of money, under the said recited acts or this act, the trustees of such savings bank shall make, give, sign, and execute an appointment, under the hands and seals of not more than four of such trustees, and the execution of which shall be attested by two managers of the same savings bank, empowering and authorising some person or persons named in such appointment to be agent or agents for receiving all and every such sum and sums of money as such trustees shall from time to time require to be paid by such commissioners; and every such appointment shall be produced by or on behalf of the person or persons named therein, to the officer of the said commissioners, 14 days at least before the payment of any sum or sums of money on account of such savings bank; and such appointment shall remain deposited in the office of such officer; and every such appointment shall be made in such form and under such regulations as shall from time to time be directed or required or approved of by the said commissioners or their officer.

Appointments may be revoked or others granted from time to time.

§ 5. Provides and enacts, that it shall be lawful for the trustees of any savings bank, by whom any such appointment shall be made, given, signed, and executed, or for the survivors or survivor of such trustees, to revoke such appointment by any certificate or other instrument under the hands and seals, or hand and seal of such trustees or trustee, attested by two managers of such savings bank, and in such form and under such regulations as shall be directed or required or approved of by the said commissioners or their officer; and in case of the decease of every such trustee except one, it shall be lawful for the surviving trustee, together

with any other trustee or trustees, not exceeding four in the whole, of the said savings bank; and in case of the decease of all such trustees, it shall be lawful for any other trustees of the said savings bank, not exceeding four in the whole, from time to time to make, give, and execute an appointment in manner aforesaid, re-appointing the person or persons named in such appointment, or any other person or persons in his or their room or stead, to be the agent or agents of such trustees; and every such certificate or instrument of revocation, and every such new appointment, shall be produced to the officer of the said commissioners, by the person or persons named in such new appointment, 14 days at the least before the payment of any sum or sums of money to the person or persons named in such new appointment, and shall remain deposited in the office of such officer.

1 G.4. c.83.

§ 6. Enacts, that it shall be lawful for the trustees of any such savings bank, from time to time (by any draft or order in writing under the hands of any two trustees of such savings bank, attested by two other trustees or managers, or by any two credible witnesses, according to such form as the said commissioners for the reduction of the national debt shall from time to time direct) to require that the whole or any part of the principal sum or sums of money, standing in the books of the said commissioners, to the credit of the trustees of such savings bank respectively, shall be paid to such person or persons as such trustees shall from time to time require, being the agent or agents named in some appointment executed under this act, and lodged with the officer of the said commissioners as hereinbefore mentioned and then remaining in force, and every such draft or order shall be addressed to the said commissioners; and upon the same being produced to the officer of the said commissioners, the said officer shall, within five days after the production thereof, upon the back of such draft or order indorse and sign an order in such form as shall or may from time to time be directed and required by the said commissioners, for the payment of the sum mentioned in the draft or order of such trustees, together with the amount of all interest due on such sum up to the day immediately preceding the day of the date of the order of such officer, and which order of such officer, previous to the issuing thereof, shall be entered and countersigned by the clerk making such entry, and shall be addressed to the cashiers of the governor and company of the said bank of *England;* and such cashiers, or one of them, shall, upon the production of such order, pay the sum mentioned therein to the person or persons mentioned in the draft or order of the said trustees, and the signature of such person or persons jointly or severally, shall be a sufficient discharge to the said governor and company; and all payments made in pursuance of such drafts or orders respectively, shall be deemed and taken to be payments made by the said commissioners for the reduction of the national debt, to the trustees of such savings bank respectively, according to the numerical order and priority of date in which the original receipts for money deposited on account of such savings banks respectively shall have been issued to the trustees thereof respectively, in manner hereinbefore mentioned.

Trustees of savings banks may draw at any time for the whole or any part of any sum placed to their account, by drafts on commissioners for reduction of national debt; which shall be indorsed by their officer, with the interest added thereto, and paid by the cashiers of the bank.

1 G.4. c.83.
5 G.4. c.62.

Trustees of savings banks in England or Ireland appearing in person may receive payments of drafts of trustees instead of their agent.

By stat. 1 *G.*4. *c.*83. § 7. and by 5 *G.*4. *c.*62. § 17. It is enacted, That in case any one or more trustee or trustees of any savings bank in *England* or *Ireland* respectively, who shall have made, given, signed, and executed any such appointment by virtue of stat. 1 *G.*4. *c.*83. in *England*, or by virtue of this act in *Ireland*, or in case any one or more other trustee or trustees of any such savings bank shall at any time appear in person at the office of the said commissioner in *England* or *Ireland* respectively, and require payment of any sum or sums of money which might be required by the person or persons authorized to receive the same by such appointment, or if any trustee or trustees of any savings bank shall appear in person where no such appointment shall have been made, and if such trustee or trustees so appearing shall produce a draft or order signed by any two or more trustees of such savings bank in *England*, or by any three or more trustees of such savings bank in *Ireland*, no such trustee or trustees being himself or themselves the party or parties who signed such draft or order, and if the identity of the person of the trustee or trustees so appearing shall be ascertained to the satisfaction of the said commissioners or their officer, it shall be lawful for the said officer to direct payment to be made to such trustee or trustees so appearing, of any sum or sums required to be paid by such draft or order, in like manner as if the person or persons authorized by such appointment to receive the same had required such payment; any thing contained in stat. 1 *G.*4. *c.*83. or in this act, to the contrary in anywise notwithstanding.

1 G.4. c.83.
Sums due on existing debentures outstanding on any 20th Nov. or 20th May, shall be placed to account of the several savings banks, and the interest shall be consolidated with the interest accruing.

Stat. 1 *G.*4. *c.*83. § 8. Enacts, that all and every sum or sums of money which shall be due on the 20th day of *Nov.* 1820, or on the 20th day of *May* 1821, or on the 20th day of *Nov.* or 20th day of *May* in any subsequent year after the passing of this act, for interest upon or in respect of any debenture or debentures which shall have been or shall be issued under the said before recited acts, at any time before the said 1st day of *August* 1820, and which may be outstanding on any such 20th day of *November* or 20th day of *May* respectively, shall, within 30 days after such 20th day of *November* and 20th day of *May* respectively, be placed to the credit of the respective savings bank on whose account respectively such debentures were originally issued; and the said interest so due shall be consolidated with the interest which shall accrue from time to time on every such 20th day of *November* and 20th day of *May* respectively, upon all or any other sums then standing on the account of such respective savings banks, under and by virtue of this act. See stat. 5 *G.*4. *c.*62. § 31. *ante*, p. 274.

Parties may receive the whole or part of debentures in money, or take a receipt for the same, according to the provisions of this act.

§ 9. Provides and enacts, that it shall be lawful for the trustees of any savings bank, on whose account any such outstanding debentures may have been issued, (by an order made under the hands of any two of such trustees, in such form as the said commissioners shall direct, and upon the production of the debentures to which such order shall refer, severally indorsed with the names and under the hands of the same two trustees who shall sign the said order,) to draw upon the said commissioners for payment in money of the whole or of any part of the principal sum contained in any such outstanding debenture or debentures

(together with the interest due thereon); and that at any time on or after the 21st day of *December*, 1820, it shall be lawful for such trustees in lieu of receiving the whole amount of such principal and interest, or any part thereof, in money, to accept from the officer of the said commissioners a receipt for the whole, or for any part of such principal and interest according to the provisions of this act, dated either before or on, or after the said 21st day of *December*, and it shall be lawful for the said officer to indorse such order of the said trustees for payment of the whole principal and interest of such debenture or debentures, or any part thereof, in money, in the manner hereinbefore directed, or to issue and deliver to the person or persons applying for the same, a receipt carrying interest at the rate of 3*d. per centum per diem* (according to the directions contained in this act) for such sum of money as shall be required by such order of such trustees, and such sum of money contained in such receipt shall thereupon be carried to the account of the trustees of such savings bank, as if the same had been an original deposit under the directions of this act, and shall be subject to all the regulations contained in this act, and in the said recited acts, as the same are altered or amended by this act; and all debentures which shall be so paid or exchanged shall be thereupon cancelled, and shall cease, determine, and become utterly void.

1 G.4. c.83.

§ 11. Provides and enacts, that nothing in this act contained shall extend or be construed to prevent the trustees of any savings bank from demanding and receiving payment in stock, of any one or more debenture or debentures which may be outstanding at the time of the passing of this act, according to the provisions and regulations prescribed by the said recited acts, or either of them, in case such trustees shall think fit to demand and require the same.

Debentures may be paid in stock under recited acts.

§ 13. Enacts, that in all cases where the joint stock or property of the depositors in any savings bank in *England* may have been or may be increased by any change of stock, or by any increased rate of interest paid or to be paid on any debentures or receipts, beyond the rate of interest payable to the depositors by the original rules and regulations of such savings bank, or by any other means, it shall be lawful for the trustees for the time being of any such savings bank, to make such rules, orders, and regulations for the application and disposal of any increased stock or property belonging to any such saving bank, to and amongst the depositors therein, either by way of an increase of interest beyond the rate of interest originally stipulated to be paid to such depositors, or by way of bonus or increase of capital to the sums deposited by them respectively; or by both such means as the trustees and managers of such savings bank, or the major part of them, at any general meeting to be duly convened according to the rules, orders, and regulations of such savings bank, shall from time to time think fit and proper; and that it shall be lawful for such trustees and managers, or the major part of them, from time to time at any other general meeting so duly convened, to revoke, annul, alter, or make void any such rules, orders, and regulations, and to make any other rules, orders, or regulations relating thereto, as such trustees and managers for the time being, or the major part of them, shall think fit and proper.

Trustees may make rules for the application of increased stock or property.

1 G. 4. c. 83.

Drafts of 2000*l.* and upwards, shall be signed by four trustees, and attested by separate witnesses.

§ 14. Provides and enacts, that whenever the sum to be drawn for by the trustees of any savings bank shall amount to 2000*l.* or upwards, the draft or order for that purpose shall be signed by not less than four such trustees; and that the signature of each and every of the said four trustees shall be separately attested by at least one manager of such savings bank, or by some one other credible person; and that any manager or other person attesting the signature of any one of the said four trustees, shall not be an attesting witness to the signature of any other of such four trustees.

5 G. 4. c. 62. Draft for 5000*l.* not to be paid until after 21 days.

Stat. 5 *G.* 4. *c.* 62. § 37. Whenever the sum to be drawn for by the trustees of any savings bank in *England* or *Ireland* respectively, or by the trustees of any friendly society in *England*, shall amount to the sum of 5000*l.* or upwards, the amount of such draft shall not be payable or paid by the officer of the commissioners for the reduction of the national debt until the expiration of 21 days next after the day when the draft for such sum shall be produced to the said officer.

1 G. 4. c 83. Receipts may be given under this act in lieu of debentures lost, &c. on application of two trustees.

Stat. 1 *G.* 4. *c.* 83. § 15. Enacts, that in case any debenture which shall have been issued under the authority of the said recited acts, or either of them, at any time before the passing of this act, shall have been or shall be lost, destroyed, or defaced, it shall be lawful for the said commissioners for the reduction of the national debt, on application by any two trustees on behalf of the saving bank on whose account such debenture was originally issued, and upon proving on oath or otherwise, to the satisfaction of the said commissioners, of the date, contents, and value of such debenture, and of the circumstances of the loss, destruction, or defacing thereof, to direct and order the officer of the said commissioners to issue to the person or persons making such application, upon their giving and entering into such security as shall be required and directed by the said commissioners, (in case the said commissioners shall think any such security to be requisite,) a receipt carrying interest as aforesaid, according to the directions contained in this act, for a sum of money equal in amount to the principal and interest due on such debenture so lost, destroyed, or defaced; and such sum of money shall thereupon be carried to the account of the trustees of such savings bank, as if the same had been an original deposit under the directions of this act, and shall be subject to all the regulations contained in this act and the said recited acts, as the same are altered or amended by this act.

Money paid into the bank subject to the rules prescribed in the 59 G. 3. c. 128.

§ 18. Enacts, that all the regulations and provisions in this act contained, relative to money paid into the bank of *England*, and debentures issued on account thereof, shall be applicable to payments so made, and debentures issued under the authority of stat. 59 *G.* 3. *c.* 128. Vide tit. Friendly Societies, Vol. II.

Commissioners may employ clerks, &c.

§ 19. Enacts, that it shall be lawful for the said commissioners for the reduction of the national debt, and they are hereby authorised and empowered to appoint and employ such and so many clerks and other officers as shall be necessary for carrying into execution the purposes of the said recited acts and this act;

Treasury may pay them, and discharge incidental expences.

and that it shall be lawful for the lord high treasurer, or the commissioners of H. M.'s treasury of the U. K. of *Great Britain* and *Ireland* for the time being, and they are hereby authorised and empowered to settle and appoint such allowances as shall be pro-

per for the service, pains, and labour of any clerks or other person or persons to be appointed and employed by the said commissioners for the reduction of the national debt, in manner and for the purposes aforesaid, and out of any aids or supplies which shall be granted for the service of any year, to discharge and pay all such allowances and all other incidental charges which shall necessarily attend the execution of the said recited acts, and this act, in such manner as to them shall seem just and reasonable.

1 G.4. c.83.

By 57 *G.* 3. *c.* 130. § 28. that act shall be deemed a public act, and stat. 1 *G.* 4. *c.* 83. § 20. enacts, that the recited acts of the 57 & 58 *G.* 3. (*c.* 48.) and this act, shall be construed together as one act, so far as the same are compatible and consistent with each other, and so far as the said acts are not expressly repealed or altered by this act.

Recited acts and this act to be construed together as one act.

Stat. 57 *G.* 3. *c.* 130. § 14. Enacts, "That the said commissioners shall cause all the monies paid into the bank of *England* and placed to their account in pursuance of the provisions of this act, to be invested from time to time in the purchase of bank annuities in their names, and to be carried to the new and separate account hereinbefore provided; and the interest which shall arise from time to time and become due thereon shall in like manner be invested in the purchase of bank annuities as aforesaid.

57 G.3. c.130. Monies paid in on savings bank account to be invested in bank annuities.

By stat. 5 *G.* 4. *c.* 62. § 27. It is enacted, that from and after the 20th day of *November*, 1824, the several sums of money belonging to any savings bank in *England* or *Ireland* respectively, which the trustees of such savings banks respectively are authorised to invest under the said recited acts or any of them, or this act, or under any rules or regulations of any such savings banks, shall be paid into and invested in the bank of *England* or the bank of *Ireland*, as the case may require, in the names of the commissioners for the reduction of the national debt, according to the provisions of the several acts and this act, enabling such trustees to make investments in the names of the said commissioners; and no such sum or sums shall be paid or laid out by the trustees of such savings bank in any other manner, or upon any other security whatever, any thing in the several herein-before recited acts, or in any of them, to the contrary in anywise notwithstanding: Provided always, that nothing herein contained shall restrain or prevent any depositor, or any trustee or trustees acting on behalf of any depositor or depositors, or any friendly society, from withdrawing from any such savings bank any sum or sums of money which shall have been deposited by such depositor or friendly society, and investing the same in any other securities.

5 G.4. c.62. Trustees of savings banks shall invest all money in the bank of England or Ireland only, and not in any other security.

Not to prevent the withdrawing of money from savings banks.

By stat. 58. *G.* 3. *c.* 48. § 6. It is enacted, "That it shall be lawful for the commissioners, upon the application of the trustees of any savings banks, in manner hereinafter mentioned, and they are hereby authorised and empowered, in lieu of paying off the principal and interest of any such debenture or debentures in money, to cause their agent or agents (being also cashiers of the said governor and company) to transfer such an amount of either three pounds *per centum* consolidated or reduced bank annuities, or bank annuities at the rate of three pounds and ten shillings *per centum*, as shall by computation produce, as hereinafter directed, the like amount in money as the amount of the principal and

58 G.3. c.48. Commissioners may transfer stock to the amount of principal and interest of debentures.

58 G. 3. c. 48.

interest of such debenture or debentures, out of any account of the said bank annuities standing in the names of the said commissioners in the books of the bank of *England*, into the name or names of any two of the said trustees, whenever the same shall be expressed and required in the order of the said trustees, in lieu of paying such debenture or debentures in money. See stat. 1 *G.* 4. *c.* 83. § 11.

Stock first to be converted into money by computation.

§ 7. Enacts, "That before any three *per centum* consolidated or reduced bank annuities or bank annuities at the rate of 3*l.* 10*s.* *per centum*, shall be transferred from the account of the said commissioners, such three *per centum*, or 3*l.* 10*s.* *per centum* bank annuities, shall be first converted into money by the computation of the said officer, according to the average price of either three *per centum* consolidated or reduced bank annuities, or 3*l.* 10*s.* *per centum* bank annuities, at the option of the said trustees expressed in their said order, which shall be exhibited at the office of the said commissioners, under and by virtue of any act or acts now in force, on the day of the delivery of such order at their said office, such price being the average price of the said three *per centum* or 3*l.* 10*s.* *per centum* bank annuities, on the day preceding the production and delivery of the said order as aforesaid."

Certificate to be granted for transferring of stock.

§ 10. Enacts, "That whenever any three *per centum* consolidated or reduced bank annuities, or 3*l.* 10*s.* *per centum* bank annuities, shall be required by the said trustees to be transferred from the account of the said commissioners, as hereinbefore directed, the said officer shall and he is hereby authorised and empowered to grant his certificate (*a*) for that purpose, to the personor persons applying for the same, a duplicate whereof shall be transmitted by the said officer to the governor and company of the bank of *England*; and upon the production and delivery of the said certificate at the bank of *England*, the said agent or agents of the said commissioners shall, and he and they is and are hereby required to transfer from any account of the said commissioners, standing in the books of the said governor and company, the amount and description of stock therein stated, into the names of the two trustees of such savings bank or institution as shall be specified and described in such certificate."

Accountant general to transmit his certificate.

§ 11. Enacts, "That upon every such transfer of stock being made from the account of the said commissioners, as hereinbefore directed, the accountant general of the governor and company of the bank of *England* shall, within five days after such transfer shall have been made, transmit to the office of the said commissioners, for delivery to the person applying for the same, a certificate (*a*) thereof."

57 G. 3. c. 130. Account of all monies received by the commissioners for national debt from trustees of institutions, to be laid before parliament.

By stat. 57 *G.* 3. *c.* 130. § 18. It is enacted, "That the following account shall be prepared by the said commissioners for the reduction of the national debt, and shall be annually laid before both houses of parliament on or before the 25th of *March* in every year, if parliament shall be sitting, and if parliament shall not be sitting, then within fourteen days after the commencement of the then next session of parliament; *videlicet*, an annual account, made up to the 5th day of *January* preceding, of all sums of money which shall have been received by the said commissioners from the trustees of any institution or institutions as aforesaid in

(*a*) See as to the *forms* of certificates, &c. p. 272. n. (*a*).

pursuance of this act, showing the amount of all bank annuities which shall have been purchased by the application of such sums, and the amount of interest or dividends receivable thereon by the said commissioners, and distinguishing in such account the amount of interest payable by the said commissioners on all debentures issued to the said trustees as aforesaid within the same period, and terminating on the 5th day of *January* in every year."

57 G.3. c.130.

By stat. 5 *G*.4. *c*.62. § 20. It is enacted, that from and after 20th *Nov*. 1824, so much of stat. 57 *G*. 3. *c*. 130. (*viz*. § 19.) whereby it is provided, that the amount to be received by any such bank from any one person shall not exceed the sum of 100*l*. in the first year, and 50*l*. in every year afterwards, in the whole from each depositor; and also so much of stat. 58 *G*. 3. *c*. 48. (*viz*. § 14.) whereby it is provided, that the sums paid into any such bank by any such person who shall pay or subscribe any sum by ticket or number or otherwise, shall not exceed the sum of 10*l*. in any one year, shall from and after 20th *Nov*. 1824, be repealed; and from and after the said 20th *Nov*. 1824, no sums shall be paid or subscribed into any savings bank in *England* or *Ireland* by any person or persons, by ticket or number or otherwise, without disclosing his or her name to the trustees of such savings bank. [*Note*, the rest of this section applies to *Ireland* only.]

5G.4. c.62.

No anonymous subscriptions permitted in future.

By § 21. From and after 20th *Nov*. 1824, it shall not be lawful for the trustees of any savings bank in *England* and *Ireland* respectively, to receive from any one depositor any sum or sums exceeding 50*l*. in the whole, during the year next ensuing such 20th *Nov*. 1824, or exceeding 30*l*. in the whole, exclusive of interest, in any one year afterwards ending on the 20th *Nov*.; nor to receive from any depositor any sum or sums of money whatever which shall make the sum to which such depositor shall be entitled exceed 200*l*. in the whole, exclusive of interest.

Deposits of any one depositor shall not exceed 50*l*. in the first year, after 20th Nov. 1824, nor 30*l*. in any year after, nor beyond 200*l*. in the whole.

§ 22. Enacts, that where it shall happen that any depositor, in the course of the year next ensuing 20th *November* 1824, shall have subscribed any sum or sums not exceeding 50*l*. in the whole, or that any depositor in the course of any year afterwards ending on the 20th *November* shall have subscribed any sum or sums not exceeding 30*l*. exclusive of interest, it shall be lawful for such depositor from time to time to withdraw such sum so subscribed, or any part thereof, out of and from such savings bank, and again to deposit in the same savings bank the same or any other sum or sums not exceeding the several amounts aforesaid, at any time during the course of every such year respectively, so nevertheless that such depositor shall not at the end of any such year, or at any one time in the course of any one such year, be possessed of or entitled in the whole to more, exclusive of interest, than the several sums by this act allowed to be received from such depositor at the end of such year.

Depositors having made their full deposit in any year, may withdraw the sums, and again subscribe to the same amount.

§ 23. Enacts, that it shall be lawful for the trustees of any savings bank in *England* or *Ireland* to receive from any person acting as trustee or trustees on behalf of any depositor, any sum or sums not exceeding the annual amount herein-before mentioned; provided that such trustee or trustees shall make such declaration on the behalf of himself or themselves, and also on behalf of such depositor, and subject to the like conditions as by this act is required in the case of any person making any deposit

Persons (not being depositors) allowed to subscribe as trustees on behalf of others.

5 G.4. c.62.

on his or her own account; and all deposits made by any such trustees shall be inserted in the books of such savings bank, in the joint names of such trustee or trustees, and of the person on whose account such sum shall be so deposited; and the receipt and receipts of such trustee or trustees, or the survivor of them, or the executors or administrators of any sole trustee or surviving trustee, shall be as good and effectual to all intents and purposes as the receipt and receipts of the person on whose account such sum shall be so deposited.

So much of 1 G.4. c.83. as authorizes charitable institutions to subscribe their funds into savings banks, viz. § 12. repealed.

§ 24. Enacts, that from and after the passing of this act so much and such part of stat. 1 *G.* 4. *c.* 83. (*viz.* § 12.) shall be repealed, whereby it is enacted that it shall be lawful for the trustees of any charitable institution or society in *England* from time to time to subscribe the whole or any part of the funds of such institution or society into the funds of any savings bank; and so much and such part of the said recited act shall be and the same is hereby repealed accordingly.

Subscribers to one savings bank shall not subscribe to any other.

By § 25. It shall not be lawful for any person or persons who shall have made any deposit in or any subscription to, or who shall be entitled to any benefit from the funds of any savings bank in *England* and *Ireland,* to make any deposit in or to subscribe any sum into the funds of any other savings bank in *England* or *Ireland;* and every person desirous of making any deposit in or any subscription to any savings bank, shall at the time of making the first deposit in any savings bank next after 20th *November* 1824, and at such other time or times as such depositor shall be required so to do by the trustees or managers of any such savings bank, sign a declaration in such form as shall be directed or approved of by the commissioners for the reduction of the national debt, or their proper officer, that the person or persons, on whose behalf any such first deposit or subscription shall be required to be made, is not or are not entitled to any deposit or any such subsequent deposit or subscription in, or any benefit from, the funds of any savings bank in *England* or *Ireland,* other than that into which such deposit or subscription shall be made; and in case any such declaration shall not be true, or if any person shall at any time have or hold or be possessed of any deposit or funds in more than one savings bank within the U. K., every such person shall forfeit and lose all right and title to any deposit in or to any funds of any and every such savings bank, and the managers and trustees of such savings bank shall and they are hereby required in such case to close the account of such depositor, and to cause the sum or sums so forfeited to be forthwith paid into the bank of *England* or bank of *Ireland,* as the case may be, to the account of the commissioners for the reduction of the national debt, standing in the books of the governor and company of the said banks respectively, under the title of "The account of the commissioners for applying certain sums of money annually to the reduction of the national debt;" and the cashier and cashiers of the said governor and company is and are hereby required to receive all such sums, and to place the same to the said account to be applied in like manner as all other money placed to the said account; and every such declaration so made shall be filed and kept and preserved by the trustees of every such savings bank; and a printed notice of such regulation and prohibition shall be affixed in the

Declaration to be made at the time of subscription.

Penalty on false declaration; forfeiture of deposit to the sinking fund.

Declaration shall be filed.

office or place appointed for the receiving of deposits to any savings bank, in such form as the commissioners for the reduction of the national debt, or their proper officer shall from time to time direct or require or approve.

5 G.4. c.62.

§ 26. Provides and enacts, that at any time after the passing of this act, it shall be lawful for any depositor in any savings bank in *England* or *Ireland* to withdraw from such savings bank the whole of his or her deposits at any one time (but not in parts or shares), for the purpose of investing the same in any other savings bank in *England or Ireland;* and in such case it shall be lawful for the trustees and managers of any such savings bank from which such deposit shall be intended to be withdrawn, or any two or more of them in *England*, or any three or more of them in *Ireland*, and they are hereby required to grant to any such depositor a certificate under the hands of such two or three trustees and managers respectively, attested by the secretary or actuary of such savings bank, and such depositor shall also subscribe his or her own name to such certificate in the presence of one or more of the said trustees and managers, and such certificate shall state the whole amount of the deposit of such depositor in such savings bank, and shall be in such form as shall be directed or approved of by the commissioners for the reduction of the national debt, or their officer; and upon the production of such certificate, signed as herein before directed, to the trustees and managers of the savings bank into which such deposit is intended to be removed, the person applying shall, and he or she is hereby required to indorse his or her name on the back of such certificate in the presence of one or more of the trustees and managers of such savings bank, and such indorsement shall be attested by one of such trustees and managers; and if such trustee or trustees and manager or managers shall be satisfied that such certificate is authentic, and that no abuse is intended thereby, it shall and may be lawful for the trustees and managers of such savings bank to receive the sum specified in such certificate, and to place the same to the account of the person therein described in the books of such savings bank, any thing in the said recited acts or any of them, or in this act, to the contrary thereof in anywise notwithstanding: Provided always, that previous to such investment a like declaration shall be made by the person applying to make such deposit, as is required in other cases of making deposits in savings banks according to the provisions contained in this act; and such person shall be considered in all respects as an original subscriber to such savings bank, and shall be liable to all such rules, regulations, and restrictions as any original subscriber to such bank, as to the amount to be subscribed in any subsequent year, and as to the total amount allowed to be deposited by such subscriber.

Deposits may be withdrawn from one savings bank to be placed in another.

By stat. 58 *G.* 3. *c.* 48. § 15. It is enacted, "That the privilege of paying money into the bank of *England*, and of receiving [*debentures*, or *semb.* since 1 *G.* 4. *c.* 83. § 1.] *receipts* for the same shall be extended to such institutions as may have been established at any time previous to the passing of the said recited act of the last session of parliament, or who may have since formed or may hereafter form their rules and regulations according to the provisions of the said recited act and this act."

... act to have the privilege of investing money in the bank, &c

58 G.3. c.48.

Central banks may invest the money of branch banks.

By § 16. It is enacted, "That in cases where any banks for savings have been or shall be established in any town or place, and other smaller banks have been or shall be established in the neighbourhood of such town or place, as branch banks thereof, and such branch banks by their treasurers have paid or shall pay any sums into the bank in any such town or place, as a central bank, it shall and may be lawful for the said trustees, or any two of them, of any such central bank, to pay into the bank of *England*, in manner prescribed by the said recited act, along with the monies belonging to such central bank, any sum or sums of money belonging to and on account of any such branch bank: provided always, that the treasurers of such branch banks shall certify to the treasurer of such central bank, that the amount contributed by any one subscriber to any such branch bank in any one year, does not exceed the proportions required by this act."

57 G.3. c.130. On change of trustees, stock to be transferred.

By 57 *G.* 3. *c.* 130. § 20. "Upon every change of a trustee or trustees, the preceding trustee or trustees, his or their executors or administrators, shall and do forthwith transfer all stocks and annuities in the public funds belonging to such institution, from the name or names of such preceding trustee or trustees, to the name or names of the new trustee or trustees who shall be appointed as hereinbefore mentioned, or of such new trustee or trustees, and any continuing trustee or trustees, if any of the former trustees shall be continued, as the case shall require, so as to vest the same in such new trustee or trustees and the continuing trustee or trustees, as the case shall happen; and in case any sale or sales, transfer or transfers, of any part of such stocks or annuities, shall from time to time be directed according to the rules, orders, and regulations of such institution, every such transfer or sale shall be made by the trustee or trustees in whose name or names the same shall then stand, or by some person or persons duly authorised by such trustee or trustees, by letter of attorney executed as is required by law in such cases; and where any such transfer or sale as aforesaid shall be made under or by virtue of any letter of attorney, such letter of attorney shall not be subject to or charged or chargeable with any stamp duty whatsoever."

5G.4. c.62. Securities shall be given by treasurers, officers, &c.

By stat. 5 *G.* 4. *c.* 62. § 28. It is enacted, that from and after the 20th day of *November*, 1824, every officer or person whosoever receiving any salary or allowance for their services from the funds of any savings banks, who shall be intrusted with the receipt or custody of any sum or sums of money subscribed or deposited for the purposes of any such savings bank, or any interest or dividend from time to time accruing thereby, and all and every other officers or officer receiving salaries or allowances as aforesaid, appointed or employed by or under the trustees or managers of any such savings bank, shall become bound with sureties for the just and faithful execution of such office or trust in a sufficient sum of money; and such security shall be given by bond to the clerk of the peace, and such bond shall and may be proceeded upon in such manner as is directed by 57 *G.* 3. *c.* 105. and *c.* 130. for establishment of such savings banks in *England* and *Ireland* respectively.

57 G.3. c.130. Trustees and treasurers to account and

Stat. 57 *G.* 3. *c.* 130. § 21. Enacts, "That all and every person and persons who shall have or receive any part of the monies, effects, or funds of or belonging to such institution, or shall in any

manner have been or shall be intrusted with the disposition, management, or custody thereof, or of any securities relating to the same, his, her, or their executors, administrators, and assigns respectively, shall, upon demand made in pursuance of any order of the committee of such institution, or of any other delegated authority as aforesaid, or at any general meeting of the managers thereof, give in his, her, or their account or accounts to such committee or other authority as aforesaid, or to such general meeting of the managers of such institution, or to such other person or persons who shall be nominated to receive the same, to be examined and allowed or disallowed by the said committee or managers respectively; and shall on the like demand pay over all the monies remaining in his or their hands, and assign and transfer or deliver all securities, effects, or funds taken or standing in his or their name or names as aforesaid, or being in his or their hands or custody, to such person or persons as the said committee or managers of such institution shall appoint; and in case of any neglect or refusal to deliver such account, or to pay over such monies, or to assign, transfer, or deliver such securities, effects, or funds in manner aforesaid, it shall be lawful to and for the trustee or trustees of such institution for the time being to exhibit a petition to the justices of the peace at their general or quarter sessions of the peace for the county, riding, division, or place wherein such institution shall be established, who shall and may proceed thereupon in a summary way, and make such order therein, upon hearing all parties concerned, as to such court in their discretion shall seem just, which order shall be final and conclusive; and all assignments, sales, and transfers made in pursuance of such order shall be good and effectual in law to all intents and purposes whatsoever.

deliver up effects when required.

§ 22. Enacts, "That no person who is or shall be a member of any friendly society established or to be established under and by virtue of any act or acts relating to friendly societies, shall, by reason of such person being or becoming a depositor in any institution taking the benefit of this act, be considered as subject or liable to any penalty, forfeiture, or disability, declared or expressed, or intended so to be, by or in the rules, orders, or regulations of such friendly society, made or hereafter to be made to the contrary notwithstanding."

Members of friendly societies not liable to forfeiture by subscribing to any institution under this act.

§ 23. Enacts, "That in case any depositor in the funds of any institution taking the benefit of this act shall die, leaving any sum or sums of money in the said funds, or any dividends or interest due thereon, belonging to him or her at the time of his or her death, exceeding in the whole the sum of 20*l.*, the same shall not be paid to any person or persons as representative or representatives of such depositor, but upon probate of the will of the deceased depositor, or letters of administration of his or her estate and effects: provided always, that where the whole estate or effects of any such deceased depositor, for or in respect of which any probate or letters of administration respectively shall be granted, shall be under the value of 50*l.* sterling, no stamp duty shall be chargeable thereon, nor upon any legacy or residue or part thereof bequeathed, nor upon any share or part of the estate or effects to be paid or distributed by or under such probate or letters of administration: provided also, that in every such case the person or persons claiming such probate or letters of administration free of

When property is under the value of 50*l.* no stamp duty to be paid in cases of administration.

57 G 3. c. 130.

stamp duty under this act shall exhibit to the court or person having authority to grant the probate or letters of administration in such case, a certificate of the amount and value of the share and interest which the deceased depositor had in the funds of the said institution; which certificate shall be granted in such form and manner as shall have been settled by the rules, orders, regulations, or bye-laws of the institutions respectively, and shall be signed or testified by such person or persons as shall be directed therein; and every such certificate shall be taken and received, by the court or person having authority to grant such probate or letters of administration, as evidence of the amount or value of the shares and interests of the deceased depositor in the funds of the said institution."

1 G. 4. c. 83. Administration bonds, &c. for effects of depositors under 50*l.* and receipts, &c. under this act, exempted from stamp duty.

By stat. 1 *G.* 4. *c.* 83. § 16. It is enacted, that after the passing of this act, in all cases where the whole estate and effects of any deceased depositor, for or in respect of which any letters of administration shall be granted pursuant to stat. 57 *G.* 3. *c.* 130. § 23., shall be under the value of 50*l.* sterling, no stamp duty shall be chargeable upon the bond required to be given by the administrator for the due administration of the effects of such deceased depositor, nor upon any affidavit or document leading to or connected with such administration; but that every such bond and affidavit shall be exempted from stamp duty, in like manner and under the like regulations as are provided in and by the said recited act, with respect to such letters of administration; and that no receipt, nor any draft or order, nor any appointment of any agent or agents, nor any certificate or other instrument for the revocation of any such appointment, nor any other instrument or document whatever, required or authorised to be given, issued, signed, made, or produced in pursuance of the said recited act or this act, shall be subject or liable to any stamp duty whatever; any thing in any act for imposing any duty of stamps to the contrary in anywise notwithstanding.

5 G. 4. c. 62. Payment to persons appearing to be next of kin, declared valid.

By stat. 5 *G.* 4. *c.* 62. § 19. It is enacted, that whenever any trustees or managers of any savings bank in *England* or *Ireland* shall at any time after the decease of any depositor have paid and divided any such sum of money not exceeding 20*l.*, to or amongst any person or persons who shall at the time of such payment appear to such trustees or managers to be entitled to the effects of any deceased intestate depositor, according to the statute of distributions, or according to the rules and regulations of any such savings bank, the payment of any such sum or sums of money shall be valid and effectual, with respect to any demand of any other person or persons as next of kin to such deceased intestate depositor, or as the lawful representative or representatives of such depositor, against the funds of such savings bank, or against the treasurers or trustees or managers thereof; but nevertheless such next of kin or representatives shall have remedy for such money so paid as aforesaid against the person or persons who shall have received the same.

Remedy against the persons receiving the money.

1 G. 4. c. 83. Payment to persons appearing to be next of kin, declared valid.

Stat. 1 *G.* 4. *c.* 83. § 17. Enacts, that whenever any trustees or managers of any savings bank shall, at any time after the expiration of six months after the decease of any depositor, have paid and divided any sum of money, not exceeding 20*l.*, to or amongst any person or persons who shall, at the time of such payment, appear

to such trustees or managers to be entitled to the effects of any deceased intestate depositor, according to the statute of distributions, the payment of any such sum or sums of money shall be valid and effectual with respect to any demand of any other person or persons as next of kin to such deceased intestate depositor, or as the lawful representative or representatives of such depositor, against the funds of such savings bank, or against the treasurer or trustees or managers thereof: but nevertheless, such next of kin or representatives shall have remedy for such money so paid as aforesaid, against the person or persons who shall have received the same.

1 G.4. c.83.

Remedy against the persons receiving the money.

Stat. 57 *G.* 3. *c.* 130. § 24. Enacts, "That in case any depositor in the funds of any such institution shall die, leaving a sum of money in the said fund, which, with the interest thereon, shall not exceed in the whole 20*l*., it shall be lawful for the trustees or managers of such institution, and they are hereby authorised and required, if no will shall be proved, or no letters of administration shall be taken out, (see 5 *G.* 4. *c.* 62. § 18.) within six calendar months after the death of the said depositor, to pay the same according to the rules and regulations of the said institution in such case made and provided: and in the event of there being no rules and regulations made in that behalf, then the said trustees or managers are hereby authorised and required to pay and divide the same to and amongst the person or persons entitled to the effects of the deceased intestate, according to the statute of distributions."

57 G.3. c.130. Where the effects of a person dying intestate shall be under 20*l*. the same may be divided according to the rules of the institution, &c.

Stat. 5 *G.* 4. *c.* 62. § 18. Enacts, that from and after the passing of this act, *viz.* 17 *June* 1824, it shall be lawful for the trustees and managers of any savings bank in *England* or *Ireland* respectively, to pay any sum of money not exceeding in the whole 20*l*., exclusive of interest thereon, which any depositor in the funds of any such savings bank shall die possessed of or entitled to, at any time after the decease of any such depositor, in case such trustees shall be satisfied that no will was made and left by such deceased depositor, and that no letters of administration will be taken out of the goods and chattels of such depositor; and such payment shall be made to such person as such trustees are by stat. 57 *G.* 3. *c.* 130. § 24. authorised to make payment, if no will shall be proved or no letter of administration taken out within six calendar months after the death of such depositor.

5 G.4. c.62. Trustees may pay sums under 20*l*. at any time after decease of depositor, instead of six months.

By stat. 57 *G.* 3. *c.* 130. § 25. After reciting, that "whereas such institutions may be subject to considerable losses on payment of money or transfer of securities to persons who may have obtained letters of administration of the effects of a depositor, or probate of a will or testamentary disposition, or supposed will or testamentary disposition of such depositor, which letters of administration or probate may afterwards be repealed or deemed null and void;" it is enacted, "that payment on transfer of any money or security for money by any such institution as aforesaid to any person or persons having any such letters of administration or probate of any such will or testamentary disposition, granted by any ecclesiastical court, and appearing to be in force, shall be valid and effectual with respect to any demand of any other person or persons as the lawful representative or representatives of such depositor against the funds of such institution, or

57 G.3. c.130. Payments under probates of wills, &c. afterwards repealed, shall be valid.

57 G. 3. c. 130.

against the treasurer, trustees, or managers thereof; but nevertheless such lawful representative or representatives shall have remedy for such money or securities for money so paid or transferred as aforesaid, against the person or persons who shall have received the same."

Powers of attorney given by trustees or depositors not liable to stamp duty.

§ 26. Enacts, "That no power, warrant, or letter of attorney granted or to be granted by any person or persons as trustee or trustees of any institution established under this act, for the transfer of any share or shares in the public stocks or funds standing in the name or names of such person or persons as such trustee or trustees; nor any power, warrant, or letter of attorney given by any depositor or depositors in the funds of such institution to any other person or persons, authorising him, her, or them to make any deposit or deposits of any sum or sums of money in the funds on the behalf of the said depositor or depositors, or to sign any document or instrument required by the rules, orders, regulations, or bye-laws of such institution to be signed on making such deposits, or to receive back any sum or sums of money deposited in the said funds, or the dividends or interest arising therefrom; nor any receipts given for any dividend or dividends in any public stock or fund, or interest of exchequer bills; nor any receipt, nor any entry in any book of receipt for money deposited in the funds of any such institution, nor for any money received by any depositor, his or her executors or administrators, assigns or attornies, from the funds of such institution, shall be subject or liable to or charged with any stamp duty or duties whatsoever."

Where rules direct an arbitration, the award to be final.

§ 27. Enacts, "That where provision shall be made by one or more of the general rules, orders, or regulations of any such institution, and filed as herein-before required, for a reference by arbitration of any matter in dispute between any such institution, or any person or persons acting under them, and any individual depositor therein, or any executor, administrator, next of kin, or creditor of any deceased depositor, or any person claiming to be such executor, administrator, next of kin, or creditor, then and in every such case the matter so in dispute shall be referred to such arbitrator or arbitrators as shall have been named according to the general rules, orders, or regulations of such institution; and whatever award, order, or determination shall be made, according to the true purport and meaning of the rules, orders, and regulations of such institution, shall be binding and conclusive on all parties, and shall be final to all intents and purposes, without any appeal."

58 G. 3. c. 48. No arbitration or other bond, &c. to be liable to stamp duty.

And by stat. 58 *G.* 3. *c.* 48. § 18. It is enacted, that no arbitration bond or bond of reference, nor any award, order, or determination of any arbitrator or arbitrators, or umpire, which shall be made under the general rules, orders, or regulations of any institution, filed as required by the said recited act of the last session of parliament, and which award, order, or determination are by the said act declared to be final without appeal, shall be subject or liable to or charged with any stamp duty or duties whatsoever.

5 G. 4. c. 62. Savings banks shall make up annually accounts of their

By stat. 5 *G.* 4. *c.* 62. § 29. And for the more effectually ascertaining from time to time the actual and progressive state of the several savings banks in *England* and *Ireland* respectively, be it enacted, that from and after the 20th of *Nov.* 1824, the trustees or mana-

gers of any savings banks in *England* and *Ireland* respectively shall annually cause a general statement of the funds of such savings bank to be prepared, up to 20th *Nov.* in each year, showing the balance or principal sum due to all the depositors collectively in such savings bank, and stating in whose hands such balance shall then be remaining, and every such annual statement shall be attested by two managers or two trustees, or by one manager and one trustee of such saving bank, and every such annual statement shall be countersigned by the secretary or actuary of such savings bank, and all such annual statements shall be transmitted to the office of the said commissioners for the reduction of the national debt in *London* or *Dublin*, as the case may be, within 30 days next after 20th *Nov.* in each year; and in case the trustees of any such savings bank shall neglect or refuse to make out and transmit such account as aforesaid, or in case any such trustees shall at any time neglect or refuse to obey any orders or directions given by the said commissioners for the reduction of the national debt, or their officer, pursuant to the directions of the said recited acts or this act, it shall be lawful for the said commissioners to close the account of the trustees of such savings bank, and to discontinue the keeping any further account with the trustees of such savings bank, and to direct that no further sum shall be received at the bank of *England*, or at the bank of *Ireland*, from the trustees of such savings bank, to the account of the said commissioners, until such time as such commissioners shall think fit: provided, that it may be lawful for the said commissioners to re-open such account, and to allow the growing interest of such account during the time of such discontinuance, and to authorize the receipt of money at the banks of *England* or *Ireland* whenever such commissioners shall think fit so to do, upon such trustees complying with the directions of such commissioners, or their officer.

5 G.4. c.62.

progress, stating the balance, and in whose hands, and transmit such accounts to the commissioners for the reduction of the national debt.

If trustees of savings banks neglect to deliver such returns, or to obey orders of commissioners, commissioners may close their account, &c.

Re-opening account.

By § 30. The trustees or managers of every such savings bank shall cause a duplicate of every such annual statement, attested and countersigned as aforesaid, to be publicly affixed and exhibited in some conspicuous part of the office or place where the deposits of such savings bank are usually received, for the information of all persons making deposits therein; and every such duplicate shall from time to time remain so affixed and exhibited, until the ensuing annual statement shall in like manner be affixed and exhibited as aforesaid.

A duplicate of such account shall be affixed in the office of the savings bank.

By § 32. From and after the passing of this act, (*viz.* 17th *June*, 1824,) in lieu of the accounts by stats. 57 *G.* 3. *c.*105. and *c.* 130. for encouraging the establishment of banks for savings in *England* and *Ireland* respectively, required to be annually laid before both houses of parliament by the commissioners for the reduction of the national debt, the following accounts shall be prepared by the said commissioners, and shall be annually laid before both houses of parliament, on or before the 25th *March* in every year, if parliament shall be sitting; and if parliament shall not be sitting, then within 14 days after the commencement of the then next session of parliament; that is to say, accounts made up to the 20th *Nov.* then next preceding, of the gross amount of all sums received and credited, and of all sums paid from the time of the passing of stats. 57 *G.* 3. *c.* 105. and *c.* 130. for the encouraging the establishment of banks for

Accounts shall be annually laid before parliament by commissioners for the reduction of the national debt in lieu of accounts under 57 G.3. c. 105. 57 G.3. c.130.

5 G. 4. c. 62.

savings in *England* and *Ireland* respectively, up to such 20th *Nov.*, by the said commissioners, on account of the trustees of the several savings banks in *England* and *Ireland*, and also on account of any friendly societies in *England* respectively, and of the gross amount of all sums, stocks, funds, and annuities, standing in the names of such commissioners on the 20th *Nov.*, on account of any such savings banks or friendly societies respectively, and the sums paid for the purchase of such stocks, funds, or securities, and the gross amount of interest or dividends received thereon by the said commissioners, and the gross amount of interest paid by such commissioners up to such 20th *Nov.* on all debentures or receipts issued to the trustees of any such savings banks or friendly societies in *England* and *Ireland* respectively.

Treasury may issue exchequer bills on application of commissioners for the reduction of the national debt, for payments to savings banks.

By § 33. Whereas it will be advantageous to enable the commissioners for the reduction of the national debt more readily to provide for the making of the several payments required by the said several recited acts or this act to be made to the trustees of savings banks or friendly societies from time to time; it is enacted, that from and after the passing of this act it shall and may be lawful for the commissioners for the reduction of the national debt, or for the proper officer or officers of the said commissioners, from time to time to make application to the lord high treasurer or to the commissioners of H. M.'s treasury of the U. K., stating and certifying what sum of money may be required for satisfying any demands which shall from time to time be made upon the said commissioners for the reduction of the national debt, by the trustees of any savings bank or friendly society in *England* or *Ireland*; and thereupon it shall and may be lawful for the lord high treasurer or commissioners of the said treasury, or any three of them, in case they shall think fit and proper so to do, by warrant under their hands to cause or direct any number of exchequer bills to be made out at the receipt of H. M.'s exchequer in *G. B.*, for such sum or sums of money as shall be from time to time stated and certified in any such application of the said commissioners for the reduction of the national debt, or their officer or officers, under the directions of the said commissioners, or for any part of any such sum or sums; and such exchequer bills shall be made out in like manner, form, and order, and according to the like rules and directions prescribed by stat. 48 *G.* 3. *c.* 1.

Banks may make advances to commissioners for the reduction of the national debt, upon such exchequer bills.

By § 34. It is enacted, that it shall be lawful for the governor and company of the bank of *England* and bank of *Ireland* respectively, from time to time to advance to the said commissioners for the reduction of the national debt such sum or sums of money, on the credit of any such exchequer bill or bills, and at such times as the said commissioners shall from time to time require; any law or statute to the contrary thereof in anywise notwithstanding.

How such exchequer bills shall be paid off by commissioners for reduction of the national debt.

By § 35. It is enacted, that the principal sum of every such exchequer bill upon which any sum of money shall have been so advanced by the governor and company of the banks of *England* or of *Ireland* respectively, under this act, shall, together with all interest due thereon, be discharged from time to time by the said commissioners for the reduction of the national debt, in such portions as the said commissioners shall deem fit and expedient, with and out of any monies invested from time to time by the trustees

of any savings banks or friendly societies in *England* or *Ireland* respectively, and carried to the credit of the said commissioners, on account of such savings banks or friendly societies, or with and out of the monies or funds commonly called *The Sinking Fund*, standing in the names of the said commissioners in the books of the governor and company of the banks of *England* or *Ireland* respectively, or by both or either of such means of repayment as the said commissioners shall deem most proper and convenient; and that immediately upon any such payment being made by the said commissioners for the reduction of the national debt, exchequer bills to the amount of the principal sum so paid off and discharged shall be delivered up to the said commissioners by the governor and company of the bank of *England* or bank of *Ireland* respectively; and the said commissioners shall forthwith cause the said exchequer bills to be delivered to the paymasters of exchequer bills to be cancelled.

5 G.4. c.62.

Regulations when such bills are paid off by advances from the sinking fund.

By § 36. Whenever the principal sum of any such exchequer bill or bills shall have been discharged and paid off by any sum or sums of money advanced from the sinking fund under the provisions of this act, the said commissioners for the reduction of the national debt shall cause their agent or proper officer to transfer, from any account standing in the names of the said commissioners in the books of the governor and company of the bank of *England*, or from any accounts standing in their names in the books of the bank of *Ireland*, under or by virtue of the said recited acts or any of them, or of this act, or of any act or acts relating to friendly societies, as the case may be, into the account standing in the names of the said commissioners in the books of the bank of *England* or bank of *Ireland* respectively, under the title of "the account of the commissioners appointed by act of parliament for applying certain sums of money annually to the reduction of the national debt," such an amount of stock as shall produce by computation the principal sum and interest of all such exchequer bills so paid off and discharged; and the said computations shall be made by the proper officer or officers of the said commissioners, according to the price at which such stock shall have been purchased by the said commissioners on the day of transferring the said amount of stock as aforesaid; and upon every such transfer of stock being made as herein-before directed, the accountant general of the governor and company of the bank of *England* or bank of *Ireland* respectively, shall thereupon transmit to the office of the said commissioners for the reduction of the national debt, a certificate of every such transfer, containing the amount and description of stock so transferred.

Indemnity to commissioners of the banks of England and Ireland.

By § 39. This act shall be a full and sufficient indemnity and discharge to the commissioners for the reduction of the national debt, and to the governor and company of the bank of *England* and bank of *Ireland* respectively, and their officers, for all things to be done or required or permitted to be done pursuant to the said recited acts or this act.

Bankrupt.

I. *Derivation and description of a Bankrupt: and herein, of a trading and act of Bankruptcy.* [5 G. 4. c. 98.]

II. *Not surrendering or embezzling Effects.* [1 & 2 G. 4. c. 115. — 5 G. 4. c. 98.]

I. Derivation and Description of a Bankrupt.

Derivation.

LORD *Coke* says, that *banque* in *French* signifies the same as *mensa* in *Latin*; and that *route* is a sign or mark, as we say a cart rout is the sign or mark where the cart hath gone; and that metaphorically a *bankrupt*, or *banqueroute*, is taken for him that hath wasted his estate, and removed his banque, so as there is left but a mention thereof. 4 *Inst.* 277.

And it is observable that the title of the first English statute concerning this offence, stat. 34 & 35 *H.* 8. *c.* 4. " An act against such persons as do make bankrupt," is a literal translation of the *French* words *qui font banque route.*

But as the first bankers came to us from *Italy*, it seemeth more probable that they brought their name along with them; and consequently that the word *bankrupt* or *banqueroute* cometh from the Italian *banco rotto*, the *bench* being *broken*. The *banker* himself was so called from the *bench* or table which he used with his name inscribed, and when he failed, his bench was broken. Which word *rotto* is what remaineth in that country of the Latin *ruptus*; all which, both word and metaphor, we preserve in our language, when we say, that a person is *bankrupt*, or that such a one is broken.

But whatever be the derivation of the word, a bankrupt has been defined to be a trader who secretes himself, or does certain other acts, tending to defraud his creditors. Throughout the three first statutes, the bankrupt is uniformly called an offender, and the original policy of the bankrupt laws seems to have been to prevent and defeat the frauds of criminal debtors. The bankrupt being deemed an offender, and being completely divested of the disposition of his property, those statutes at the first would naturally be considered penal statutes. As trade however increased, the risks and calamities incident to commercial speculation were found to augment proportionably, and at length a bankrupt ceased to be considered as a criminal. Accordingly the fourth statute on the subject (21 *J.* 1. *c.* 19.) stated, at its very commencement, that " All and singular the aforesaid statutes and laws heretofore made against bankrupts, and for relief of creditors, shall be in all things largely and beneficially construed and expounded for the aid, help, and relief of the creditors, of such person or persons as already be, or hereafter shall become bankrupt;" and at this day the bankrupt laws are considered to be a system calculated for the benefit of trade, and founded on the principles of humanity, as well as justice. To that end they confer some privileges, not only on the creditors, but also on the bankrupt or debtor himself; on the creditors, by compelling the bankrupt to give up all his effects to their use, without any fraudulent concealment; on the debtor, by exempting him from

the rigour of the general law, whereby his person might be confined at the discretion of his creditor, though he in truth should be destitute of any means to discharge the debt; whereas the system of laws in relation to bankrupts, taking into consideration the sudden and unavoidable accidents to which men in trade are liable, has secured to them personal freedom and some pecuniary emoluments, upon condition that they surrender up their whole estate for the benefit of those who, in confidence of the bankrupt's solvency, have become his creditors.

The description of a bankrupt by stat. *5 G. 4. c.* 98. (*a*) is as follows:

5 G. 4. c. 98. What persons shall be deemed *traders*, liable to become bankrupt.

§ 2. All bankers, brokers, underwriters, and persons insuring ships or their freight, or other matters against perils of the sea, warehousemen, wharfingers, packers, builders, carpenters, shipwrights, victuallers, innkeepers, stage-coach proprietors, brewers, maltsters, dyers, printers, bleachers, fullers, scavengers, manufacturers of alum or kelp, cattle or sheep salesmen, and all persons engaged in any traffic of drawing and redrawing, negotiating or discounting bills of exchange, promissory notes, or negotiable securities, except exchequer, navy, or victualling bills or ordnance debentures; and all persons making bricks or burning lime for sale, being tenants, lessees, or partners in such trade or undertaking; and all persons using the trade of merchandize by way of bargaining, exchange, bartering, commission, consignment, or otherwise, in gross or by retail; and all persons, who either for themselves, or as agents or factors for others, seek their living by buying and selling, or by buying and letting for hire, or by the workmanship of goods or commodities, shall be deemed traders liable to become bankrupt; provided, that no farmer, grazier, common labourer, or workman for hire, receiver general of the taxes, or member of or subscriber to any incorporated commercial or trading companies established by charter, or by or under the authority of any act of parliament, shall be deemed as such a trader liable by virtue of this act to become bankrupt.

Acts of bankruptcy; viz. departing realm or dwelling-house; absenting; beginning to keep house; yielding to prison; fraudulent outlawry; arrest; attachment; execution; deed; delivery or transfer.

§ 3. Enacts, that if any such trader shall depart this realm, or being out of the realm shall remain abroad, or depart from his dwelling-house, or otherwise absent himself, or begin to keep his house, or suffer himself to be arrested for any debt not due, or yield himself to prison, or suffer himself to be outlawed, or procure himself to be arrested, or his goods, money, or chattels to be attached, sequestered, or taken in execution, or make or cause to be made, either within the united realm or elsewhere, any grant or conveyance of any of his lands, tenements, goods, or chattels, or make or cause to be made any surrender of any of his copyhold lands or tenements, or make or cause to be made any gift, delivery, or transfer of any of his goods or chattels; every such trader doing, suffering, procuring, executing, permitting, making, or causing to be made any of the acts, deeds, or matters aforesaid, with intent to defeat or delay his creditors in the recovery of their debts, shall be deemed to have thereby committed an act of bankruptcy.

Verbal declaration of insolvency;

§ 4. Enacts, that if any such trader shall, at any meeting of his creditors, declare or admit that he is insolvent, or unable to meet

(*a*) This act, by § 1. repeals the various acts relating to bankrupts, except 1 & 2 G. 4. c. 115. § 21. *post.*

5 G.4. c. 98.

his engagements, or if any such trader having been arrested or committed to prison for debt, or on any attachment for non-payment of money, shall, upon such or any other arrest or commitment for debt or non-payment of money, or upon any detention for debt, lie in prison for 21 days; or if any such trader, having been so arrested, committed, or detained, shall escape out of prison or custody, every such trader shall be deemed to have thereby committed an act of bankruptcy; provided that if any such trader shall be in prison at the time of the commencement of this act, such trader shall not be deemed to have committed an act of bankruptcy by lying in prison, until he shall have lain in prison for the period of two months.

lying in prison; escaping out of prison; deemed acts of bankruptcy. Proviso as to lying in prison.

§ 5. Enacts, that if any such trader shall petition to take the benefit of the present or any future act for the relief of insolvent debtors, such petition, when filed, shall be an act of bankruptcy; but no commission shall issue thereupon, unless it be sued out within two calendar months next after notice of such petition has been inserted in the *London Gazette*.

Petition to take benefit of insolvent act. When commission thereon to issue within two months.

§ 6. Enacts, that if any such trader shall file, in the office of the Lord Chancellor's secretary of bankrupts, a declaration in writing, signed by such trader, and attested by an attorney or solicitor, that he is insolvent, or unable to meet his engagements, the said secretary of bankrupts, or his deputy, shall sign a memorandum that such declaration hath been filed, which memorandum shall be authority for the printer of the *London Gazette* to insert an advertisement of such declaration therein; and every such declaration shall, after such advertisement inserted as aforesaid, be an act of bankruptcy committed by such trader at the time when such declaration was filed; but no commission shall issue thereupon unless it be sued out within two calendar months next after the insertion of such advertisement, and unless such advertisement shall have been inserted in the *London Gazette* within eight days after such declaration was filed; and no docket shall be struck upon such act of bankruptcy before the expiration of four days next after the insertion of such advertisement, in case such commission is to be executed in *London*, or before the expiration of eight days next after such insertion, in case such commission is to be executed in the country; and in all proceedings before the commissioners, the gazette containing such advertisement shall be evidence to be received of such declaration having been filed.

Declaration of insolvency left at bankrupt office, an act of bankruptcy. Advertisement to be inserted in Gazette. When commission to issue. Form of striking docket in a town and country commission. Gazette evidence.

§ 8. Enacts, that if any such trader, liable by virtue of this act to become bankrupt, shall, after a docket struck against him, pay to the person or persons who struck the same, or any of them, money, or give or deliver to any such person any satisfaction or security for his debt, or any part thereof, whereby such person may receive more in the pound in respect of his debt than the other creditors, such payment, gift, delivery, satisfaction, or security shall be an act of bankruptcy; and if any commission shall have issued upon the docket so struck as aforesaid, the Lord Chancellor may either declare such commission to be valid, and direct the same to be proceeded in, or may order it to be superseded, and a new commission may issue upon such last mentioned or any other act of bankruptcy; and every person so receiving such money, gift, delivery, satisfaction, or security as aforesaid, shall forfeit his whole debt, and also repay or deliver up such money, gift, satisfaction, or security as aforesaid, or the full value thereof, to such person or persons as the commissioners acting

Trader compounding with petitioning creditor an act of bankruptcy. Commission may either be superseded or continued. Creditor so compounding. Penalty.

under such original commission, or any new commission, shall appoint, for the benefit of the creditors of such bankrupt.

5 G.4. c.98.

§ 10. Enacts, that if any creditor or creditors of any such trader having privilege of parliament to such amount as is hereinafter declared requisite to support a commission, shall file an affidavit or affidavits in any court of record at *Westminster* that such debt or debts is or are justly due to him or them respectively, and that such debtor, as he or they verily believe, is such trader as aforesaid, and shall sue out of the same court a summons, or an original bill and summons against such trader, and serve him with a copy of such summons, if such trader shall not, within one calendar month after personal service of such summons, pay, secure, or compound for such debt or debts to the satisfaction of such creditor or creditors, or enter into a bond in such sum, and with two sufficient sureties, as any of the judges of the court out of which such summons shall issue shall approve of, to pay such sum as shall be recovered in such action or actions, together with such costs as shall be given in the same, and within one calendar month next after personal service of such summons cause an appearance or appearances to be entered to such action or actions in the proper court or courts in which the same shall have been brought, every such trad'r shall be deemed to have committed an act of bankruptcy from the time of the service of such summons; and any such creditor or creditors of such trader may sue out a commission against him, and proceed thereon in like manner as against other bankrupts.

Trader having privilege of parliament, not paying or compounding to satisfaction of creditor, and also entering an appearance to the action within one month, an act of bankruptcy.

§ 11. Enacts, that if any decree or order shall have been pronounced in any cause depending in any court of equity, or any order made in any matter of bankruptcy or lunacy against any such trader having privilege of parliament, ordering such trader to pay any sum of money, and such trader shall disobey, the same having been duly served upon him, the person or persons entitled to receive such sum under such decree or order, or interested in enforcing the payment thereof pursuant to such decree or order, may apply to the court by which the same shall have been pronounced, to fix a peremptory day for the payment of such money, which shall accordingly be fixed by an order for that purpose; and if such trader being personally served with such last mentioned order eight days before the day therein appointed for payment of such money, shall neglect to pay the same, he shall be deemed to have committed an act of bankruptcy from the time of the service thereof; and any such creditor or creditors as aforesaid may sue out a commission against him, and proceed thereon in like manner as against other bankrupts.

Trader having privilege of parliament, disobeying order of any court of equity, or in bankruptcy, or lunacy, for payment of money after service and peremptory day fixed, an act of bankruptcy.

II. Not surrendering or embezzling Effects.

By stat. 5 *G.* 4. *c.* 98. § 108. It is enacted, that if any bankrupt shall not, before three o'clock in the afternoon of the forty-second day after he shall have been declared bankrupt, notice thereof in writing having been first left at his usual place of abode, or served upon him in case he was in prison, and notice given in the *London Gazette*, of the issuing of the commission, and of the meetings of the commissioners, surrender himself to them, and sign or subscribe such surrender, and submit to be examined before them from time

Bankrupt not surrendering and submitting to be examined before 3 *p. m.* of forty-second day after declared bankrupt;

5G.4. c.98.
not discovering his estate and effects;

to time upon oath, or being a quaker upon solemn affirmation; or if any such bankrupt upon such examination shall not discover all his real and personal estate, and how, and to whom, upon what consideration, and when he disposed of, assigned, or transferred any of such estate, and all books, papers, and writings relating thereunto, except such part as shall have been really and *bonâ fide* before sold or disposed of in the way of his trade, or laid out in the ordinary expence of his family; or if any such bankrupt shall not upon such examination deliver up to the commissioners all such part of such estate, and all books, papers, and writings relating thereunto, as be in his possession, custody, or power (except the necessary wearing apparel of himself, his wife, and children); or if any such bankrupt shall remove, conceal, or embezzle any part of such estate to the value of 10*l.* or any books of account, papers, or writings relating thereto, with intent to defraud his creditors, every such bankrupt shall be deemed guilty of felony, and be liable to be transported for life, or for such term, not less than seven years, as the court before which he shall be convicted shall adjudge; or shall be liable to be imprisoned only, or imprisoned and kept to hard labour in any common gaol, penitentiary house, or house of correction, for any term not exceeding seven years.

or not delivering up his goods, books, &c.
or removing, concealing, or embezzling to the value of 10*l.*;
guilty of felony, with transportation for life, &c.

Chancellor may enlarge time for surrender.

§ 109. Enacts, that the Lord Chancellor may, as often as he shall think fit, from time to time, enlarge the time for the bankrupt surrendering himself, for such time as the Lord Chancellor shall think fit, so as every such order be made six days at least before the day on which such bankrupt was to surrender himself.

Benefit to bankrupt apprehended and conforming.

§ 111. Enacts, that if any bankrupt apprehended by any warrant of the commissioners shall, within the time hereby allowed for him to surrender, submit to be examined, and in all things conform, he shall have the same benefit as if he had voluntarily surrendered.

Bankrupt to deliver up his books of account to assignees upon oath;
to attend assignees and assist them in making out his accounts;
to be at liberty to inspect accounts;

§ 112. Enacts, that the bankrupt, after the choice of assignees, shall (if thereto required) forthwith deliver up to them, upon oath, before a master ordinary or extraordinary in chancery or justice of the peace, all books of account, papers, and writings relating to his estate in his custody or power, and discover such as are in the custody or power of any other person; and every such bankrupt, not in prison or custody, shall at all times after such surrender attend such assignees upon every reasonable notice in writing for that purpose given by them to him, or left at his house, and shall assist such assignees in making out the accounts of his estate; and such bankrupt, after he shall have surrendered, may at all seasonable times before the expiration of the said 42 days or such further time as shall be allowed to him to finish his examination, inspect his books, papers, and writings, in the presence of his assignees or any person appointed by them, and bring with him each time any two persons to assist him; and after he shall have obtained his certificate, shall upon demand in writing given to him, or left at his usual place of abode, attend the assignees, to settle any accounts between his estate and any debtor to or creditor thereof, or attend any court of record to give evidence touching the same, or do any act necessary for getting in the said estate; for which attendance he shall be paid 5*s.* *per* day by the assignees out of his estate; and if such bankrupt shall, after such demand as aforesaid, not attend, or on such attendance refuse to do any of the matters aforesaid, without sufficient cause shown to the com-

after certificate to attend assignees.
Allowance to bankrupt for attendance.

missioners for such refusal, and by them allowed, the assignees making proof thereof upon oath before the commissioners, the said commissioners may, by warrant directed to such person as they shall think proper, cause such bankrupt to be apprehended, and committed to the county gaol, there to remain until he shall conform to the satisfaction of the said commissioners or of the Lord Chancellor.

5 G.4. c.98.

Imprisonment on non-attendance.

The great seal of *G. B.* has been destroyed, and a new great seal of the U. K. of *G. B.* and *Ireland* is in use, since the union with *Ireland*, to seal such matters as before issued under the great seal of *G. B.* Where a statute made before that union directs an instrument to issue under the great seal of *G. B.*, it now properly issues under the great seal of the U. K. And if it be alleged in pleading, that an instrument issued under the great seal of *G. B.*, and evidence be given of an instrument issuing under the great seal of the U. K., this is no variance. *Rex* v. *James Bullock*, 1 *Taunt.* 71.

Great seal of U. K.

By stat. 1 & 2 *G.* 4. *c.* 115. § 21. it is enacted "that the commissioners, acting under any commission of bankruptcy, shall have full power and authority, and they are hereby empowered and authorised to order and direct the messenger or messengers acting under their authority, in any such commission, to take into custody any person or persons who shall commit or be guilty of any riot or disturbance, or who shall interrupt the said commissioners in the exercise of their duty, and to have such person or persons taken before any alderman or magistrate acting in the commission of the peace, to be dealt with according to law; and the warrant of such commissioners shall be a full authority and indemnity to such messenger or messengers in so doing."

1 & 2 G. 4. c. 115.

Riotous persons to be taken into custody.

An assessment for church and highway rates is a debt, and the assessor a creditor, under the bankrupt laws. *Lloyd* v. *Heathcote*, 2 *Brod. & Bing.* 388.

Assessment for church and highway rates is a debt.

The moment the assessment is made it becomes a debt. *Per Burrough J. S. C.*

A defendant's liability, as surety in a bastardy bond, is not discharged by his bankruptcy and certificate. *The Churchwardens and Overseers of St. Martin's* v. *Warren*, 2 *Stark. C. N. P.* 188. 1 *B. & A.* 491. S. C.

Surety in bastardy bond.

A. Warrant to apprehend a Bankrupt. A.

County of ——— to wit. } To

WHEREAS a certificate under the hands and seals of ——— hath this day been produced before me, ———, setting forth that a commission of bankruptcy is issued against ———, under which the said ———, on the ——— day of ———, now last past, was proved before the major part of the commissioners authorised by the said commission, to have become a bankrupt, and was duly adjudged and declared to be a bankrupt accordingly: And whereas application hath been made to me by ———, by order of the said commissioners, for apprehending the said ———: These are therefore to require you, on sight hereof, to take and apprehend the said ———, and bring him before me or some other of H. M.'s justices of the

peace for the said county, to be proceeded against according to law. Given under my hand and seal this ——— day of, &c.

R. B. (L. S.)

B.

B. Commitment thereon.

County of } To the keeper of H. M.'s gaol of · or his
——— } deputy.
to wit. }

RECEIVE into your custody the body of G. P. *herewith sent you, brought before me* R. B. *esq. one of H. M.'s justices &c. by* D. B. *and charged before me the said justice, upon the oath of* G. A. *with being the same identical person against whom a commission of bankruptcy had been awarded and issued, under which the said* G. P. *on the ——— day of ———, now last past, was proved before the major part of the commissioners authorised by the said commission to have become a bankrupt, and duly adjudged and declared to be a bankrupt accordingly, as appears to me by a certificate under the hands and seals of* E. C., *&c. the major part of the commissioners in the said commission named, dated the ——— day of ———, now last past. And him therefore safely keep in your custody, till he shall be removed by order of the said commissioners or the major part of them, by warrant under their hands and seals. And for so doing this shall be your sufficient warrant. Given under my hand and seal this ——— day of ——— 18—.*

R. B. (L. S.)

See Ex parte Page, 1 B. & A. 568.

N. B. A short digest of the Law and Practice in Bankruptcy has recently been published by Mr. *Roots*.

Baron Court.

THE *court baron* is a court which every lord of the manor (anciently called a *baron*) hath within the precinct of that manor. The business thereof is to enquire of matters concerning the lord and tenant in their *civil* capacity only, as of the death of tenants since the last court, of alienations, surrenders, encroachments, tresspasses, escheats, forfeitures, and such like. But with this court is frequently held, by grant or prescription, a *Court Leet;* the jurisdiction whereof extendeth to all *criminal* matters within the precinct, for the preservation of the king's peace; For which see title Leet, Vol. III.

Barratry.

I. *What it is.*
II. *How punished.*

I. What it is.

THIS word *barratry* we have received either from the *Danes* or *Normans*, or both: for *barrata* in the *Danish* and *baret* in the *Norman*, do equally signify a quarrel or contention.

And a *barrator*, in legal acceptation, doth signify a *common mover, exciter, or maintainer of suits or quarrels, either in courts or in the country.* 1 Inst. 368. 1 Haw. c. 81. § 1.

A common mover] It seems clear that no one can be a barrator in respect of one act only; but every indictment for such crime must charge the defendant with being a *common barrator.* 1 Haw. c. 81. § 5.

Mover, exciter, or maintainer] Yet it seemeth that an attorney is in no danger of being judged guilty of an act of barratry, in respect of his maintaining another in a groundless action, to the commencing whereof he was no way privy. 1 *Haw. c.* 81. § 1.

Also it hath been holden that a man shall not be judged a barrator in respect of any number of false actions brought by him in his own right; for in such cases he is liable to costs. 1 *Haw. c.* 81. § 4.

In courts.] Either courts of record, or not of record, as in the county, hundred, or other inferior courts. 1 *Inst.* 368.

Or in the country.] In three manners: 1. In disturbance of the peace. 2. In taking or keeping possession of lands in controversy, not only by force, but also by subtilty and deceit, and most commonly in suppression of truth and right. 3. By false inventions, and sowing calumniations, rumours, and reports, whereby discord and disquiet may grow between neighbours. 1 *Inst.* 368.

II. How punished.

[34 Ed. 3. c. 1. — 12 G. 1. c. 29.]

34 Ed. 3. c. 1.

By stat. 34 *Ed.* 3. *c.* 1. *The justices of the peace shall have power to restrain all barrators, and to pursue, arrest, take, and chastise them, according to their trespass or offence.*

And although this statute does not create the offence, but supposes it at common law, and only appoints the punishment, yet an indictment of barratry, concluding *against the form of the statute,* is holden to be good, and agreeable to many precedents. *Cro. Eliz.* 148. 1 *Haw. c.* 81. § 10.

But it hath been resolved that such indictment is not good, without also concluding *against the peace;* for this is an essential part of it, as being an offence by the common law. *Id.* § 12.

And it hath been holden that an indictment of this kind may be good, without alleging the offence at any certain *place;* because from the nature of the thing, consisting of the repetition of several acts, it must be intended to have happened in several places: for which cause it is said that a trial ought to be by a jury from the body of the county. *Id.* § 11.

This case, and that of a common scold, seem to be the only offences for which a general indictment will lie, without shewing any of the particular facts in the indictment; for barratry is an offence of a complicated nature, consisting in the repetition of divers acts in disturbance of the peace, and it would be too prolix

to enumerate them in the indictment; and therefore experience hath settled it to be sufficient to charge a man generally as a common barrator, and before the time to give the defendant a note of the particular matters which are intended to be proved against him; for otherwise it will be impossible to prepare a defence against so general and uncertain a charge, which may be proved by such a multiplicity of different instances; and therefore the court generally will not suffer the prosecution to go on in the trial of the indictment, without such note being given to the defendant. 1 *Haw. c.* 81. § 13. 2 *Haw. c.* 25. § 59.

As to the kind and manner of punishment, it is said that if the offender be a common person, he shall be fined and imprisoned, and bound to his good behaviour, and if he be of any profession relating to the law, he ought also to be further punished, by being disabled to practise for the future. 1 *Haw. c.* 81. § 14.

12 G. 1. c. 29.

And by stat. 12 *G.* 1. *c.* 29. § 4. If any person, who hath been convicted of common barratry, shall practise as an attorney or solicitor; he shall be transported for seven years.

Bastards.

Concerning the *Settlement* of Bastard Children, and the *Removal* of unmarried Women with child, see title Poor, Vol. IV. § V. 1. § XVII. 1.

I. Who shall be deemed a Bastard.

A BASTARD by our *English* laws, is one that is not only begotten, but born out of lawful matrimony. The civil and canon laws do not allow a child to remain a bastard if the parents

afterwards intermarry; and herein they differ most materially from our law; which, though not so strict as to require that the child shall be *begotten*, yet makes it an indispensable condition to make it legitimate, that it shall be born after lawful wedlock. 1 *Blac. Com.* 454. 2 *Inst.* 96.

If the issue be born within a month or a day after marriage between parties of full lawful age, the child is legitimate. 1 *Inst.* 244.

As all children born before matrimony are bastard, so are all children born so long after the death of the husband, that by the usual course of gestation, they could not be begotten by him. (*a*) But this being a matter of some uncertainty, the law is not exact as to a few days. (*b*) *Cro. Jac.* 451.

So also children born during wedlock, may in some circumstances be bastards, as if the husband be out of the kingdom of *England* for above nine months, so that no access to his wife can be presumed, her issue during that period shall be bastards. *Co. Litt.* 244. 1 *Blac. Com.* 457.

So also if there is an apparent *impossibility* of procreation on the part of the husband, as if he be only eight years old or the like, there the issue of the wife shall be bastards. *Ib.*

In *Lomas* v. *Holmden*, 2 *Stra.* 940. The defendants were admitted to give evidence of inability from a bad habit of body. But their evidence not going to an *impossibility*, but an improbality only, that was not thought sufficient.

The bastard child of a married woman is within the meaning of the 18 *Eliz.* (hereafter following, see § 4.) which speaketh of "*Children begotten and born out of lawful matrimony.*" *Rex* v. *Albertson*, 10 *W.* 3. 1 *Ld. Raym.* 395, 396.

Evidence may be received of non-access though the husband be within the four seas.

Formerly, if the husband were within the four seas, no proof of *non-access* to his wife was admitted, but the child was deemed to be his: but as this notion was built on no rational foundation, it is now departed from; and though the husband and wife are both in *England*, if there be sufficient proof that he had no access to her, the child will be a bastard. This was determined in the case of

Pendrell v. *Pendrell*, 2 *Stra.* 925. *Andr.* 9. which was an issue out of chancery, to try whether the plaintiff were the heir at law of one *Thomas Pendrell.* It was agreed by court and counsel, on the trial at *Guildhall*, before Ld. Ch. J. *Raymond*, that the old doctrine of *being within the four seas* was not to take place, but the jury were at liberty to consider of the point of access, which they did, and found against the plaintiff. And the court of chancery acquiesced in the determination.

How far the wife's oath shall be admitted in such case.

But this non-access of the husband ought to be proved otherwise than upon the wife's oath only; as in the following case:

Rex v. *Reading*, 2 *Sess. Ca.* 175. The defendant *Reading* was adjudged, by an order of bastardy, to be the putative father of a bastard child, begotten of the wife of one *Almont* of *Sherborn*. The said woman, on the appeal, gave evidence that the said *Reading* had carnal knowledge of her body in or about *August*, 1732,

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(*a*) According to *Co. Lit.* 123. *Legitimum tempus mulieribus constitutum*, is nine months or forty weeks. See *Dalt. c.* 11. *p.* 34.

Widow having child after husband's death.

(*b*) A child born forty weeks and nine days after the death of the husband, has been allowed to be legitimate. *Alsop* v. *Bowtrell*, *Cro. Jac.* 341.

and several times since; and that her husband had no access to her from *May* 1731 to the time of her examination in that court, being the 3d of *October*, 1733, and that the said *Reading* was the father of the said child. And the question, on removal of the same into the K. B. was, whether the wife in this case should be admitted as a witness for or against her husband, and to bastardise her own child? And the whole court were of opinion, that the wife could be a witness to no other fact but that of incontinence, and that this she must be admitted to be witness to from the necessity of the thing; but not to the absence of her husband, which might properly be proved by other witnesses; and they likened it to the case of hue and cry, where the person robbed shall be admitted a witness of the fact of robbery, but not to prove any other matter relating thereto, as in what hundred the place was, and the like, because that may be proved by others.

She may be a witness to the fact of her incontinence; but not to the fact of non-access.

Where a child appears to have been born in wedlock, the evidence of the parents, especially of the mother, who is the offending party, is inadmissible to prove the *non-access* of her husband, and bastardise the issue. This is a rule founded in decency, morality, and policy. *Goodright dem. Stevens* v. *Moss*, 2 *Cowp.* 591.

And it makes no difference that the father is *dead* at the time when the wife is examined, for the rule is grounded upon the general principle of public policy affecting the children born during marriage, as well as the parties themselves. *Rex* v. *Kea*, *E.* 49 *G.* 3. 11 *East*, 132.

The wife may be examined as to access of some other person, but not as to the non-access of her husband; that must be proved *aliunde*. Per Ld. *Ellenborough*, C. J. *S. C. M. S.*

On examination of the wife and on *other proof*.

But in the case of *Rex* v. *Bedall*, *Andr.* 8. 2 *Stra.* 1076. the order, reciting that on the examination of the mother, *and on other proof*, it appeared that her husband had no access to her, was held to be good; for there the woman's oath is not set forth as the only evidence, but *other proof*, which must be intended legal proof.

Order made as well on the oath of the wife *as otherwise* good.

Rex v. *Luffe*, 8 *East*, 193. By an order of bastardy, dated *Aug.* 20. 1806, it was *inter alia* stated, " Whereas it appeareth unto us the said justices, as well upon the oath of the said *Mary Taylor as otherwise*, that her husband hath been beyond the seas, and that she did not see her said husband, nor *had access to him* from the 9th of *April*, 1804, until the 29th of *June* last past, and whereas it hath also appeared to us, the said justices, as well upon the complaint, &c. as upon the oath of the said *M. T.* that she, the said *M. T.* on or about the 13th of *July* now last past, was delivered of a male bastard child, in the said parish of *B.*, and that the said male bastard child is *likely to become chargeable*, &c. We, therefore, *upon examination* of the cause and circumstance of the premises, *as well upon the oath of the said M. T. as otherwise*, do hereby adjudge," &c. — There were three objections made to this order; *viz.* 1st, That the wife was admitted to prove the non-access of her husband. 2dly, That this being the child of a married woman, the justices had no jurisdiction to make an order of filiation, unless the child appeared to have been actually chargeable, and not merely likely to become so. 3dly, That the non-access of the husband was not proved to have continued during the whole time of the wife's pregnancy; which was necessary to bastardise the issue. — It was

held by the Court, that the words "as otherwise" should be intended of evidence given upon oath: that it did not appear to what particular facts the wife deposed, or what were proved by other evidence; and then the rule laid down in *Rex* v. *Bedall* applied, that if there were other witnesses besides the wife, and she were competent to prove any part of the case, the court would intend in support of an order framed like the present, that she was examined only as to those facts which she was competent to prove: As to the second objection, it is a consequence which follows of course from establishing the *bastardy* of the child that it is born out of *lawful matrimony*. A child born by adulterous intercourse is as much within the provision of the act of *G.* 2. as one which is born of a single woman. As to the third objection, that as it appeared that the husband returned within access of the wife about a fortnight before the child was born, he must presumed to be the father of it: By the law of the land no man can be a bastard, who is born after marriage, *unless for special matter*. The fact of access or non-access may be gone into. Circumstances which shew a natural impossibility that the husband could be the father of the child of which the wife is delivered, whether arising from his being under the age of puberty, or from his labouring under disability occasioned by natural infirmity, or from the length of time elapsed since his death, are grounds on which the illegitimacy of the child may be founded: That on the ground of *improbability*, however strong, they (*the court*) should not venture to proceed; but only upon such as shewed absolute physical impossibility. That the general presumption would prevail, except a case of plain natural impossibility were shewn; and to establish as an exception a case of such extreme impossibility as the present could not do harm.

The fact of access or non-access may be gone into.

In *Goodright dem. Thompson* v. *Saul*, 4 *T. R.* 356. the court of K. B. held, that there was no necessity to prove the impossibility, if the other circumstances of the case tended strongly to repel the presumption of access. And this point has been since established by the opinion of the judges in the case of a claim to the *Earldom of Banbury*, which involved a question of legitimacy in the person from whom the claimant derived his title. The following questions were proposed to the judges. Vide *Phil. Ev.* 146. *Case of the Banbury Claim of Peerage. MS.* 2 *Selw. N. P.* 709. 4th edit.

First. Whether evidence may be received and acted upon to bastardise a child born in wedlock after proof given of such access of the husband and wife by which, according to the laws of nature, he might be the father of such child, the husband not being impotent, except such proof as goes to negative the fact of generating access.

Secondly. Whether such proof must not be regulated by the same principles as are applicable to the legal establishment of any other fact.

On the 4th of *July* 1811, the lord chief justice of the *Common Pleas*, Sir *James Mansfield*, delivered the following unanimous answers;

First. "That in every case where a child was born in lawful wedlock, the husband not being separated from his wife by a sentence of divorce, sexual intercourse was presumed to have taken

place between the husband and wife, until that presumption was encountered by such evidence, as proved, to the satisfaction of those who were to decide the question, that such sexual intercourse did not take place at any time, when by such intercourse the husband could, according to the laws of nature, be the father of such a child."

Secondly. "That the presumption of the legitimacy of a child born in lawful wedlock, the husband not being separated from his wife by a sentence of divorce, could only be legally resisted by evidence of such facts or circumstances as were sufficient to prove, to the satisfaction of those who were to decide the question, that no sexual intercourse did take place between the husband and wife at any time when by such intercourse the husband could, by the laws of nature, be the father of such child. That where the legitimacy of a child in such a case was disputed on the ground that the husband was not the father of such a child, the question to be left to the jury was, whether the husband was the father of such child? And the evidence to prove that he was not the father, must be of such facts and circumstances as were sufficient to prove to the satisfaction of the jury, that no sexual intercourse took place between the husband and wife at any time, when by such intercourse the husband could, by the laws of nature, be the father of such child."

"That the non-existence of sexual intercourse was generally expressed by the words 'non-access of the husband to the wife;' and that the Judges understood those expressions as applied to the present question, as meaning the same thing; because in one sense of the word access, the husband might be said to have access to his wife as being in the same place or in the same house, and yet under such circumstances, as, instead of proving, tended to disprove that any sexual intercourse took place between them." See 25 *Hansard's Parl. Deb.* 98. 99. and *Lords' Journ.*

Head v. *Head*, 1 *Sim. & Stu. R.* 159. The rule of evidence as to the illegitimacy of the child born, whilst the husband is *infra quatuor maria* has been varied: the evidence must be of a nature to exclude all doubt as to the non-sexual intercourse of the husband, but still it may be shewn by every species of legal evidence tending to the same conclusion. Whenever a husband and wife are proved to have been together at a time when, in the order of nature, if sexual intercourse had taken place, he might have been the father of the child, the presumption is that it did take place, and the presumption can only be negatived by disproving the fact of sexual intercourse by evidence of circumstances which afford irresistible presumption that it could not have taken place, and not by mere evidence of circumstances affording a balance of probabilities against it.

Parents bastardising issue by disproving marriage.

In *St. Peter's* v. *Old Swynford*, 2 *Sess. Cas.* 298. the father was permitted to bastardise the son; the Chief Justice declaring that he saw no reason why the father should be thought an incompetent witness; for his evidence in that case could no way discharge himself, but he would remain liable to maintain the bastard.

So in the case of *Rex* v. *Bramley*, 6 *T. R.* 330. Lord *Kenyon* C. J. said, the evidence of the wife to prove that she and her supposed husband were never legally married was certainly admissible, though the justices at the sessions were to judge of

the effect of it. In the case of *Rex* v. *St. Peter's*, it was expressly held that the supposed husband was a competent witness to disprove the marriage. There are also many other cases in which it has been decided that the *parents may be called as witnesses with respect to the legitimacy of their issue;* and if they may be called to prove that they are legitimate children, there is no reason why they should be considered as incompetent, when called upon to prove that the children are illegitimate. But in all these cases such testimony is open to great observation.

St. George's v. *St. Margaret's, Westminster*, 1 *Salk.* 123. 1 *Blac. Com.* 457. Where a woman is separated from her husband by a divorce *à mensâ & thoro*, the children she has during the separation are bastards; for a due obedience to the sentence shall be intended, unless the contrary be shewn; but if a husband and wife, without sentence, do part and live separate, the children shall be taken to be legitimate, and so deemed till the contrary be proved, for access shall be intended. But if a special verdict find the man had no access, it is a bastard; and so was the opinion of Lord *Hale* in the case of *Dickins* v. *Collins*.

Child born during a divorce.

On voluntary separation, access shall be intended,

But may be rebutted.

If a woman grossly *enceinte* marry, it is the child of the husband; for when they testify their consent by a public marriage before the birth of the child, it is a public acknowledgment that the child is his, for at that time the child is one with the mother, and therefore in taking the mother, he takes the child with her. 1 *Roll. Abr.* 358.

Women with child when married.

Where the parents have married so recently before the birth of the child that it could not have been begotten in wedlock, the marriage of the parties is the criterion adopted by the law, in such cases of antenuptial generation, for ascertaining the actual parentage of the child. For this purpose it will not examine when the gestation began, looking only to the recognition of it by the husband in the subsequent act of marriage. *Per* Ld. *Ellenborough* C. J. *Rex* v. *Luffe*, 8 *East*, 207, 208. *S. C. ante.*

II. Securing the reputed Father.

By stat. 6 *G.*2. *c.*31. § 1. Reciting "Whereas the laws now in being are not sufficient to provide for the securing and indemnifying parishes and other places from the great charges frequently arising from children begotten and born out of lawful matrimony," it is enacted, "That if any single woman shall be delivered of a bastard child, which shall be chargeable or likely to become chargeable to any parish or extra-parochial place (*a*), and shall, in

6 G.2. c.31.

Case of delivery.

(*a*) In the statute here follow the words, "or shall declare herself to be with child, and that such child is likely to be born a bastard, and to be chargeable to any parish or extra-parochial place; and shall in either of such cases in an examination," &c. but by stat. 49 *G.*3. *c.*68. § 6. so much of stat. 6 *G.* 2. c.31. "as authorizes the justice or justices before whom the reputed father of a bastard child shall be brought, *in cases where the woman has not been delivered, to commit* such reputed father to the common gaol or house of correction, unless he shall give security to indemnify the parish or place, or shall enter into a recognizance with sufficient surety, upon condition to appear at the next general quarter sessions or general sessions of the peace, is repealed."

49 G.3. c.68. § 6.

And it is presumed that § 2. of stat. 6 *G.*2. is also virtually repealed, as that section applies only to cases of commitments, where the woman has *not* been delivered.

6 G. 2. c. 31.

A.

an examination (A.) to be taken in writing, upon oath, before one or more justice or justices of the peace of any county, riding, division, city, liberty, or town corporate, wherein such parish or place shall lie, charge any person with having gotten her with child; it shall and may be lawful to and for such justice or justices, upon application made to him or them by the overseers of the poor of such parish, or by any one of them, or by any substantial householder of such extra-parochial place, to issue out his or their warrant or warrants (B.), for the immediate apprehending of such person so charged as aforesaid, and for bringing him before such justice or justices, or before any other of H. M.'s justices of the peace for such county, riding, division, city, liberty, or town corporate: And the justice or justices before whom such person shall be brought, is and are hereby authorised and required to commit (C.) the person so charged as aforesaid (*a*) to the common gaol or house of correction of such county, &c. unless he shall give security to indemnify (D.) such parish or place, or shall enter into a recognisance with sufficient surety (E.), *upon condition to appear* at the next general quarter sessions, or general sessions of the peace, to be holden for such county, &c., and to abide and perform such order or orders as shall be made in pursuance of an act passed in the eighteenth year of the reign of her late majesty queen *Elizabeth*, concerning bastards begotten and born out of lawful matrimony."

Person charged on oath with being the father.

B.

May be immediately apprehended.

C.

D.

E.

F.

The justices on prisoner's request may summon the overseers, &c.

G.

By § 3. it is enacted, "That upon application (F.) made by any person who shall be committed to any gaol or house of correction *by virtue of this act*, or by any person in his behalf, to any justice or justices residing in or near the limits where such parish or place shall lie, such justice or justices is and are hereby authorised and required to summon (G.), the overseer or overseers of the poor of such parish, or one or more of the substantial householders of such extra-parochial place, to appear before him or them at a time and place to be mentioned in such summons, to shew cause why such person should not be discharged; and if no order shall appear to have been made in pursuance of the said act of the eighteenth year of the reign of her late majesty queen *Elizabeth*, within six weeks after such woman shall have been delivered (*b*), such justice or justices shall and may discharge (H.) him from his imprisonment in such gaol or house of correction to which he shall have been committed."

And if no order be made within six weeks after the woman's delivery, prisoner to be set at liberty.

H.

The woman not to be examined relating to her pregnancy, till one month after her delivery.

§ 4. Provided, "That it shall not be lawful for any justice or justices of the peace to send for any woman whatsoever before she shall be delivered, and one month after, in order to her being examined concerning her pregnancy, or supposed pregnancy, or *to compel any woman* before she shall be delivered to answer to any questions relating to her pregnancy."

(*a*) In *R.* v. *Bowen*, 5 *T. R.* 157., the Court of K. B. decided, that a private soldier might be committed upon such a charge; and that the charge itself was of a criminal nature.

(*b*) It seemeth, that by this clause, where no order hath been made "*within six weeks after such woman shall have been delivered*," the reputed father ought not to be committed, or if in prison, ought to be discharged; and that the parish having no relief under this act, must resort to the relief afforded by 18 *Eliz. c.* 3. hereafter set forth. *Sed qu.* Whether this clause was not intended to be repealed by stat. 49 *G.* 3. *c.* 68. § 6. See *Raithby*'s edition of the Statutes, note to stat. 6 *G.* 2. *c.* 31. § 3. and 305. n. (*a.*)

To compel any woman.] *Rex* v. *Chandler*, 1 *Stra*. 612. 2 *Ld. Raym*. 1368. Indictment for secreting a woman big with an illegitimate child, so that she could not be had to give evidence about the father. The defendant demurred. And by the Court, judgment must be given for the defendant, for the child cannot be illegitimate before it is born, there being always a possibility that it may be born in lawful wedlock.

But *note*, that by stat. 35 *G*. 3. *c*. 101. § 6. Every unmarried woman with child shall be deemed to be a person actually chargeable to the parish, &c. in which she shall inhabit, and may be removed as such to the place of her last legal settlement; As a person chargeable, if she refuse to come, a warrant may be granted to bring her, before two justices, who may take her examination, and remove. *Vid*. Vol. IV. § XVII. 1. And if she should refuse to answer proper questions put to her in the course of her examination, the justices (it should seem) may may commit her "*until she answer*." *Vid*. Vol. IV. § XVII. 2. *g*. For the purpose, therefore, of proving chargeability, it is presumed she might now be compelled to answer such questions as must necessarily be asked for the purpose of ascertaining the mere facts of her being an unmarried woman and pregnant, without requiring the name of the putative father. (*a*)

49 G. 3. c. 68. Case of non-delivery. Person charged on oath with having gotten any single woman with child, may be immediately apprehended, &c.

By stat. 49 *G*. 3. *c*. 61. § 2. it is enacted, "That if any single woman shall declare herself to be with child, and that such child is likely to be born a bastard and to be chargeable to any parish, township, or extra-parochial place, and shall in an examination (I.), to be taken in writing upon oath before any justice of the peace of any county, riding, division, city, liberty, or town corporate wherein such parish, township, or place shall lie, charge any person with having gotten her with child, it shall be lawful to and for such justice, upon application made to him by the overseer of the poor of such parish or township, or by any substantial householder of such extra-parochial place, to issue out his warrant (K.) for the immediate apprehending of such person so charged as aforesaid, and for bringing him before such justice, or before any other justice of the peace of such county, riding, division, liberty, or town corporate: and the justice before whom such person shall be brought, having authority in this behalf, is hereby authorised and required to commit (L.) the person so charged as aforesaid to the common gaol or house of correction of such county, riding, division, liberty, or town corporate, unless he shall give security (D.) to indemify such parish or place, or shall enter into a recognisance (M.) with sufficient surety or sureties upon condition to appear at the next general quarter sessions or general sessions of the peace to be holden for such county, riding, division, city, liberty, or town corporate (*b*), to abide and perform such order or orders as shall then be made in pursuance of the said act of the eighteenth year of the reign of queen *Elizabeth*, unless one such justice as

I.
K.
L.
D.
M.

(*a*) Upon the above stat. 35 *G*. 3. *c*. 101. It has been decided that an unmarried woman, with child, if a person of substance, and not likely to bring a burthen upon the parish, is not liable to be removed. Also that a single woman, serving a master under a contract of hiring and service, though pregnant, cannot be removed from her service against her own and her master's consent. *Vide* Vol. IV. § xvii. 1. *a*. xvii. 1. *b*.

(*b*) N. B. The word "and" is in stat. 6 *G*. 2. *c*. 31. § 1., but is omitted in this statute.

49 G.3. c.68.

Certificate by one justice. Of non-delivery, or of delivery within one month previous to sessions. Certificate of two justices.

N.
O.
P.

Of an order made, or that an order was not tequisite.

aforesaid shall have certified in writing under his hand (N.) to such general quarter sessions or general sessions of the peace, that it had been proved before him upon the oath (O.) of one credible witness, that such single woman had not been then delivered, or had been delivered within one month only previous to the day on which such general quarter sessions or general sessions of the peace shall be holden, or unless two justices of the peace of such county, riding, division, city, liberty, or town corporate, shall have certified in writing under their hands (P.) to the next, or where such woman shall not have been delivered as aforesaid, then to the immediately subsequent general quarter sessions or general sessions of the peace, that an order of filiation had been already made on the person so charged, or that such order was not then requisite to be made, on account of the death of the child born a bastard, or for other like sufficient reason; in each of which cases firstly before mentioned, it shall be lawful for the justices assembled at such general quarter sessions or general sessions of the peace, to respite such recognisance to the then next general quarter sessions or general sessions of the peace to be holden for such county, riding, division, city, or town corporate, without requiring the personal attendance of the putative father so bound, or of that of his surety or sureties, and in either of the said two last-mentioned cases it shall be lawful for the justices assembled as aforesaid wholly to discharge such recognisance."

III. Bond to indemnify the Parish.

By the aforesaid stats. of 6 *G*.2. *c*.31. and 49 *G*.3. *c*.68. §2. The justice before whom the party shall be brought shall commit him, unless he shall give *security to indemnify the parish* (D.), or enter into recognizance to appear at the sessions. (E.)

D.
E.

54 G.3. c.170. Overseers may sue on securities to indemnify against bastards.

By stat. 54 *G*.3. *c*.170. §8. it is enacted, "That all securities given or received, or hereafter to be given, for indemnifying any district, parish, township, or hamlet, for the maintenance of any bastard child or children respectively, or any expenses in any way occasioned by such district, parish, township, or hamlet, by reason of the birth or support of any bastard child or children born within such district, parish, township, or hamlet, or chargeable thereto, shall be, and the same are hereby declared to be vested in the overseers of the poor of such district, parish, township, or hamlet for the time being; and that it shall and may be lawful for the overseers of the poor of such district, parish, township, or hamlet, to sue for the same as and by their description of overseers of such district, parish, township, or hamlet; and such action, so commenced by such overseers, shall in no ways abate by reason of any change of overseers of such district, parish, township, or hamlet, pending the same, but shall be proceeded in by such oveersers for the time being as if no such change had taken place, any law, usage, statute, or custom to the contrary, in any wise notwithstanding."

Inhabitants to be competent witnesses for recovery of charges for the maintenance of bastards.

And by the same stat. §9. "No inhabitant or person rated or liable to be rated to any rates or cesses of any district, parish, township, or hamlet, or wholly or in part maintained or supported thereby, or executing or holding any office thereof or therein, shall, before any court or person or persons whatsoever, be deemed and taken to be by reason thereof an incompetent witness for or against such district, parish, township, or hamlet, in any matter re-

lating to such rates," &c. "or touching any bastards chargeable or likely to become chargeable to such district, parish, township, or hamlet; or the recovery of any sum or sums for the charges or maintenance of such bastards."

54 G.3. c.170.

Notwithstanding the above enactment, it may yet be considered doubtful whether the taking of a bond or an order made by the justices is most convenient for the parish. The suing upon a bond is both tedious and expensive; but then a bond will bind a man's executors; whereas the course of carrying an order into execution is very short and easy, but when the man dies the order dieth with him.

An action on a bond to indemnify a parish against the expences of a bastard child, must be brought in the names of the overseers for the time being, and not of those to whom the bond was given.

Addey v. *Woolley*, *H.* 59 *G.* 3. 3 *Moore*, *C. P.* 21. 8 *Taunt.* 691. S. C. Debt by plaintiffs, as overseers of the poor of the parish of *M.*, on a bond by defendants to indemnify that parish against the expences which might be incurred by the birth of an illegitimate child. Defendants pleaded that the plaintiffs were not overseers, nor was either of them overseer of the poor of that parish at the commencement of this suit; general demurrer and joinder.—*Copley* Serj. for plaintiffs. This case depends entirely on the construction of 54 *G.* 3. *c.*170. § 8., and the only question is, whether the right of action is vested in the overseers for the time being, or in those to whom the bond was given? The bond here was given to the present plaintiffs, who were not in office at the time the action was brought; but still they are not precluded from suing the defendants; for the statute does not prevent them from their right of action. *Blosset* Serjt. *contra*, stopped by the court. *Dallas* C. J. From the construction of 54 *G.* 3. *c.* 170. § 8. I have no doubt but that the action should have been brought in the names of the overseers for the time being. *Burrough* J. I remember reserving a similar point for the opinion of the judges, which came before me on the construction of another act of parliament. *R.* v. *Went*, Vol. III. tit. Larceny, p. 254. It was an indictment for felony; and they held that the property should be laid in the names of the overseers for the time being, and not in the names of those who were in office at the time the offence was committed. *Richardson* J. The statute 54 *G.* 3. particularly specifies that all securities given to indemnify a parish for the maintenance of illegitimate children, shall be vested in the overseers for the time being. I therefore think that they alone are entitled to sue. Judgment for defendants.

Obligee in bastardy bond becoming bankrupt.

Where the obligee in a bastardy bond, after the bond had been forfeited, became bankrupt and obtained his certificate; the court of *K. B.* held, that the parish officers were not thereby precluded from recovering upon the bond further expences incurred subsequently to the bankruptcy. *The Overseers of St. Martin's-in-the-Fields* v. *Warren*, *E.* 58 *G.* 3. 1 *B.* & *A.* 491. *S. C.* 2 *Stark. N. P.* 188.

Vide *Cole* v. *Gower*.—*Middleham* v. *Bellerby*.—*Strangeways* v. *Robinson*.—*Stainforth* v. *Staggs*, *post*, p. 312, 313.

A receipt for a promissory note, expressing a prospective and executory consideration on which the money

Watkins v. *Hewlett*, *E.* 59 *G.* 3. 1 *Brod.* & *Bing.* 1. 3 *Moore*, *C. P.* 211. This was an action for money lent, money had and received, and on the other money counts; and upon the trial of the cause at *Guildhall*, at the sittings after *Hilary* term, 1819, before *Dallas* C. J., it appeared, that the plaintiff having been charged as the putative father of a child, wherewith a pauper of the parish of *Horfield* was pregnant, and which was likely to be born a bas-

thereby secured is to be paid, may be given in evidence as a receipt on a receipt stamp, and does not require an agreement stamp, as evidence of a contract.

If the putative father of a bastard pay, before its birth, a fixed sum to the parish officers to discharge him of all future responsibility, for the maintenance of the child, after the birth and death of the child he may recover back such part of the money as remains unexpended, as had and received to his use.

tard, and to be chargeable to the parish, gave the defendant, who was then a parish officer of *Horfield*, his promissory note for 35*l*., upon which the defendant gave him a receipt upon the appropriate receipt stamp, expressing that the defedant had "received of the plaintiff a bill at two months for 35*l*., which, when paid, would discharge him from the expences of an illegitimate child, which was likely to become chargeable to the defendant's parish." The defendant negotiated this note and received thereon the sum therein specified, and the note, when due, was paid by the plaintiff. The child was born a bastard, and died a few days after its birth, and there was no distinct evidence that any part of the 35*l*. was expended by the parish on its birth, maintenance, or burial. The plaintiff now sued to recover the residue, as money had and received to his use, upon the authority of *Stainforth* v. *Staggs*, 1 *Campb*. 398. (n) and *R*. v. *Martin*, 2 *Campb*. 268.—*Hullock* Serjt. for the defendant, contended, that the receipt offered in evidence, was offered as proof of a contract which subsisted between the parties, stipulating the terms on which the sum of 35*l*. was paid; and that whether the paper itself contained the contract, or were only evidence of the contract, the subsisting stamp act 55 *G*. 3. *c*. 184. required that it should bear an agreement stamp. *Dallas* C. J. was of opinion that the evidence was admissible, but reserved the objection; and there being no proof of any money expended on the infant, a verdict passed for the plaintiff for 35*l*., with liberty to the defendant to move to enter a nonsuit, if the evidence had been improperly admitted. *Hullock* Serjt. now moved to set aside the verdict and enter a nonsuit; he admitted, that after the cases above cited, he could not contend that the action was not maintainable, but he renewed the objection, that this paper was offered as evidence of a contract, and therefore ought to have been marked with an agreement stamp: to make it admissible in evidence merely as a receipt, it ought not to contain any thing beyond the bare fact of payment of the money.—*Park* J. This objection would in all cases confine the use for which a receipt can be produced in evidence to the bare fact of the payment of a sum of money, excluding all evidence of the consideration on which it was paid.—*Burrough* J. The right to recover this money proceeds not on any contract, but on the facts which have subsequently to this payment occurred, the birth and death of the infant. Suppose there were a receipt for 500*l*. for building a house, or for a house to be built, would that be incapable of being produced in evidence, as being proof of an agreement?—*Richardson* J. The objection goes to this extent; that if in any case a receipt notices the terms or consideration of the payment, it requires an agreement stamp. This action proceeds not on any agreement contained in this paper, but on the ground, that upon the facts of this case a part of this money is become recoverable by the law of the country. The receipt merely shews the money to have been paid on account of the maintenance of a bastard child. The doctrine contended for would go to this extent, that a receipt must never express any thing except the bare fact of payment of a sum of money.

In an action on a bond to maintain a bastard child, no more can be recover-

Kirk v. *Strickland*, *Doug*. 449. It was moved for a rule to shew cause why the defendant should not be discharged upon filing common bail. It was an action of debt upon a bond, conditioned for the indemnification of a parish against a bastard child.

The penalty in the bond was 50*l.*; and the plaintiff, in his affidavit for holding the defendant to bail, had sworn that he was justly indebted to him in that sum. But the defendant, in the affidavit on which this motion was grounded, swore that only 3*l.* and some odd shillings were really due. The court said, the conduct of the plaintiff was altogether unjustifiable, and that he was liable to an action; that in the case of a bond conditioned for the performance of a promise of marriage, and in some other instances, the penalty is the real debt; but in other cases the bail could only be taken for the sum to which the plaintiff would be entitled in damages for the breach of the condition. At first, however, they seemed to think they could not relieve the defendant upon the summary application, it having been an uniform rule not to go into the merits upon such a motion, but to take the matter as it stood upon the affidavit to hold to bail; but at last they granted the rule, declaring that they were persuaded the plaintiff would not venture to shew cause against it.

ed than the money actually expended.

Brangwin v. *Perrot*, 2 *Blac. Rep.* 1190. It was moved for leave to pay 40*l.* (being the whole penalty of a bond to indemnify a parish against a bastard child) into court with costs. It was objected that this was an action for a single breach of the bond on which the parish was entitled to recover; after which the penalty shall still remain in full force, to answer subsequent breaches, as they may arise, *in infinitum.* — But not allowed by the court: and Ld. C. J. *De Grey* said, This is so plain a case that nothing that one can say can make it plainer. The bond ascertains the damage by consent of parties. If, therefore, the defendant pay the plaintiff the whole stated damages, what can he desire more?

No more than the whole penalty of the bond.

And in a similar case under the same circumstances, the court ordered satisfaction to be entered on the record. *Wilde* v. *Clarkson*, 6 *T. R.* 303.

So also in *Shutt and another* v. *Proctor*, *E.* 56 *G.* 3. 2 *March.* 226. A rule had been obtained calling on the plaintiffs to shew cause why the proceedings in an action on a bastardy bond should not be stayed, and the bond be delivered up and cancelled, on payment of 60*l.*, being the penalty of the bond and costs. — After cause shewn, *Gibbs* C. J. said, I take the law to be clearly settled, that it is unlawful to give, or to undertake to give, a sum out and out, (if I may be allowed to use so vulgar an expression) in order to indemnify a parish for the burthen which, more or less, will accrue from the birth of an illegitimate child; because it would create an interest in the death of the child. This, however, is not a contract to pay a gross sum at all events, but to pay a penalty, if the parish be not indemnified: — The object of the contract is to indemnify the parish, and that object is secured by the penalty. The party who enters into it is interested not to pay the entire penalty, if the damages do not amount to it; but if he be conscious that they do, it then becomes his interest to pay the penalty, because otherwise he would only be incurring further costs. He must be the best judge of that, and if he think that he cannot resist the payment of the full penalty, it is impossible to say that, on paying the whole of the demand which the parish have upon him, he is not entitled to be relieved from all further proceedings. — Rule absolute.

The court will stay proceedings in an action on a bastardy bond, on payment of the penalty and costs.

Under this statute the parish officers can only take security from the party *to indemnify the parish:* they cannot take a security for a sum of money in gross, payable at all events.

Overseers can take security only to *indemnify*.

Cole and others v. *Gower and another, H.* 45 *G.*3. 6 *East,* 110. *Gower*, having been charged with being the father of a bastard child, gave the overseers three promissory-notes, one for 6*l.* and the other two for 7*l.* each. The woman, after the notes were given, was delivered of a still-born child. An action having been brought on one of these notes, the defendant tendered 5*l.* which was more than sufficient to defray the actual expenses (3*l.* 14*s.*), incurred by the parish, and pleaded the general issue as to the rest. On the trial a special case was reserved, and the question was, whether the defendants were liable beyond the 5*l.* which had been tendered. It was contended for the defendants, that the contract was void, it being against the positive provisions of the legislature, and against public policy; that the object of the statute of *G.* 2. was not the punishment of the father, but the indemnity of the parish: that the statute having directly authorised one kind of security, had virtually excluded all others; and that this was a species of wager upon the life of the child, giving an interest to the parish officers in its death. And of this opinion were *the whole Court*, who thought that the plaintiffs were not entitled to recover beyond the sum paid into court, whether considering the contract as void on principles of public policy, or considering it with relation to the individuals with whom it was made, as a contract for gain or loss by persons clothed with a public trust, upon the subject-matter of their trust, and giving them an interest in the mal-execution of it. That the law did not mean to make this a matter of speculation of loss or gain to the parish. That it had said that the security should be given to them in order *to indemnify* the parish; and having so said, it had excluded every other consideration.

Voluntary bond valid.

Middleham v. *Bellerby, E.* 53 *G.*3. 1 *M.* & *S.* 310. The putative father of a bastard child gave a *voluntary* bond to the parish officer, conditioned for the payment "of the sum of 1*l.* 19*s.* every three months for so long, and until a certain bastard child should be deemed capable of providing for herself." On demurrer to the declaration on this bond, it was argued, First, that the condition goes beyond an indemnity to the parish, for the payment is not to cease in the event of the child's death, or its ceasing to be chargeable to the parish; but it is to continue until the child is deemed capable of providing for herself: Secondly, the condition to pay until the child is deemed capable, is indefinite, it should have been until the child is capable.—Lord *Ellenborough* C. J. said, If a duty be imposed by statute, the parties who are called upon to execute that must comply with its provisions; and therefore if the defendant had been apprehended under the statute, and had given this bond in order to relieve himself from commitment, there might have been much weight in the argument; but the argument does not apply where the parties are not acting under the statute. This does not appear to be any thing more than a voluntary obligation entered into by the defendant with the object of providing for the maintenance of the child; and if we do not find that it is contrary to the general policy of the law, which was the case of *Cole* v. *Gower*, I see no reason why it should not have effect. The defendant still remains liable to in-

demnify the parish. Then looking to the obligation, it amounts to this, that the putative father of an illegitimate child is willing to pay the parish officers a reasonable sum every three months until his child is deemed capable of providing for herself. I see nothing in this against general policy, and I have before said it does not seem to me to be the case within the statute; then the words "deemed capable," must be intended to mean until she shall be so deemed by a jury, which is sufficiently certain. — *Le Blanc* J. added, that if the party is brought before a magistrate, then the statute directs what shall be done; but here the party acts without any compulsion.

In *Strangeways* v. *Robinson and another*, *T.* 1812. 4 *Taunt.* 498. the court of C. P. decided that a bond, conditioned for payment to the overseers of a parish of a certain weekly sum, so long as a bastard child shall continue chargeable, is not illegal, or contrary to public policy.

Stainforth v. *Staggs*, *York Lent Ass.* 1808. 1 *Camp.* 398. (n.) 564. 1 *Claph. Sess. L.* 120. (n.) Action to recover back money paid by plaintiff to defendants (parish officers) in pursuance of an agreement for indemnifying the parish against a bastard child. The plaintiff had paid 40*l.* for that purpose, but only 4*l.* had been expended when the child died. — It was held *per Lawrence* J. That the clear surplus, after deducting the charges actually incurred, might be recovered. His Lordship observed, that if contracts of this kind were permitted, it would be always the interest, and often the inclination of overseers, that children should not survive them a week. The plaintiff had a verdict, and the court of K. B. refused a rule to set it aside. *Vide Wilde* v. *Griffin*, 5 *Esp.* 142. *Hodgson* v. *Williams*, 6 *Esp.* 29.

The parties receiving the money cannot discharge themselves by paying it over to their successors in office. *Townson* v. *Wilson*, 1 *Campb.* 396.

Officers do not require an order of maintenance to recover upon a bond given to indemnify a parish.

Hays v. *Bryant*, 1 *H. Blac.* 253. In C. P. Debt on a bond in the penalty of 50*l.* brought by the parish officers of *Ridgwell* in *Essex*, conditioned to indemnify the parish of *Ridgwell* against the charges of such bastard child or children as one *Elizabeth Winch* then went with, and should be delivered of. (*a*) It was objected that the plaintiffs or parishioners were not obliged to maintain the children without a justice's order for that purpose: but Mr. J. *Wilson*, who tried the cause, over-ruled the objection; and a verdict was found for the plaintiffs. A rule having been granted to shew cause why the verdict should not be set aside, and a nonsuit entered; the *Court* held clearly that an order of justices was not necessary to make the officers of the parish liable to do what they were otherwise under a legal obligation of doing, namely, to provide necessaries for the children, and therefore discharged the rule. *Simpson* v. *Johnson* (*post*) was cited by the defendant's counsel.

Mother removing from the parish indemnified before the child is born.

Simpson v. *Johnson*, *M.* 19 *G.* 3. *Doug.* 7. The defendant *Johnson*, being apprehended by virtue of a warrant under the statute of 6 *G.* 2. gave bond in the usual form to indemnify the parish of *Wickham St. Paul* against all costs, charges, and other demands, touching and concerning a child of which *Jemima Wass*

(*a*) N. B. She was afterwards delivered of two children.

To recover on a bond, it must appear that the expense was not incurred *voluntarily*, but in discharge of a legal obligation.

was then pregnant, and likely to be born a bastard. It happened that before the birth of the child she removed herself voluntarily from *Wickham St. Paul* to the parish of *Guestingthorpe*, and was there delivered of the same bastard child. After her delivery, she returned to the parish of *Wickham St. Paul*, where her legal settlement was, carrying her child with her, and received 1*s.* 6*d.* weekly from the plaintiff *Simpson*, who was one of the overseers of the poor there, for the maintenance of herself and her child. No order was made by any justice, directing the allowance of the said 1*s.* 6*d.* or any other sum to be paid by the parish officers of *Wickham St. Paul.* And no demand was made at any time on the defendant *Johnson*, who lived in the adjoining parish of *Guestingthorpe;* but a demand was made on one of his sureties, who refused to pay.—The court were so clearly of opinion with the defendant that they would not hear his counsel. Ld. *Mansfield* C. J. said that the payment by the parish officers of *Wickham* was doubly voluntary; first, because there had been no order upon them to pay; and, secondly, because *they* were not liable to maintain the child, but the parish where it was born, and they should have applied to the officers of that parish. Vide *R.* v. *Hemlington, Cald.* 6. *post,* Vol. IV. § v. 3. p. 281.

IV. Order of Filiation and Maintenance.

(1.) *Of the Order by Two Justices, or by the Sessions.*

If security hath not been given to indemnify the parish, the next thing in the course of proceeding is the order of filiation and maintenance.

18 El. c.3.

By stat. 18 *El. c.*3. § 2. "Concerning bastards begotten and born out of lawful matrimony (an offence against God's law and man's law,) the said bastards being now left to be kept at the charges of the parish where they be born, to the great burthen of the same parish, and in defrauding of the relief of the impotent and aged true poor of the same parish, and to the evil example and encouragement of lewd life"; it is ordained and enacted, "That two justices of the peace, (whereof one to be of the *quorum*, in or next unto the limits where the parish church is, within which parish such bastard shall be born, (upon examination of the cause and circumstance,) (Q.) shall and may by their discretion take order, (R.) as well for the punishment of the mother and reputed father of such bastard child, as also for the better relief of every such parish in part or in all; and shall and may likewise by like discretion take order for the keeping of every such bastard child, by charging such mother or reputed father with the payment of money weekly, or other sustentation for the relief of such child, in such wise as they shall think meet and convenient; and if after the same order by them subscribed under their hands, any of the said persons, *viz.* mother or reputed father, upon notice thereof, shall not for their part observe and perform the said order, that then every such party so making (V. W. X.) default in not performing of the said order, to

Order by two justices.

Q.

R.

After order made and default.

V. W. X.

be committed to ward to the common gaol, there to remain without bail or mainprize, except he, she or they shall put in sufficient surety to perform the said order, or else personally to appear at the next general sessions of the peace, to be holden in that county where such order shall be taken, and also to abide such order as the said justices of the peace, or the more part of them, then and there shall take in that behalf (if they then and there shall take any); and that if at the said sessions the said justices shall take no other order, then to abide and perform the order before made, as is aforesaid." (*a*)

18 El. c.3.

Commitment excepting upon security given to perform it or abide the order made at the next sessions.

By stat. 3 *C. c.*4. § 15. All justices of the peace within their several limits and precincts, and in their several sessions, may do and execute all things concerning that part of the said statute (*viz.* stat. 18 *El. c.*3.) that by justices of the peace in the several counties are by the said statute limited to be done. (*b*)

3 C. c.4. Order by the sessions.

And by stat. 49 *G.*3. *c.*68. § 1. After reciting that the provisions of the 18 *Eliz.* are found to be inadequate to the purposes of indemnifying parishes against the charges and expences incurred by the apprehending and securing the reputed father, and also by the obtaining the order of filiation; and that it is expedient that such charges and expences should be borne and discharged by the adjudged reputed father of such bastard child or children, at the discretion of the justices by whom such adjudication shall be made, either in the court of quarter sessions or otherwise, not exceeding the amount hereinafter mentioned; it is enacted, " That every person who shall hereafter be adjudged to be the reputed father of any bastard child or children, shall be chargeable with and liable to the payment of all reasonable charges and expences incident to the birth of such bastard child or children, and also to the payment of the reasonable costs of apprehending and securing such reputed father, and also to the payment of the costs of the order of filiation, (V. W. X.) such costs of apprehending and securing the reputed father, and of the order of filiation, not to exceed the sum of 10*l.*; and all such charges, expences, and costs, (S.) shall be duly and respectively ascertained on oath before the justices of the peace or the court of quarter sessions making such order of filiation, which oath such justices or court are hereby respectively empowered to administer."

49 G.3. c.68.

Reputed fathers of bastard children shall be chargeable with the expenses incident to the birth, with the costs of apprehending, and of the order of filiation.

V. W. X.
S.

(*a*) *Pridgeon*'s case, *Cro. Car.* 341. 350. 2 *Bulstr.* 355. *S.C.* Order by two justices under 18 *Eliz.* to *Pridgeon* to keep a bastard child of which he was stated in the order to be the reputed father; on his appeal to the next quarter sessions, he was discharged and the order quashed. Afterwards, at another quarter sessions, the matter being re-examined, it was ordered according to the first order; for non-performance of this second order, he was committed, and sued out a *habeas corpus.* All these facts being stated on the return, the K. B. held that he being discharged at the next sessions to which he appealed according to stat. 18 *Eliz.* the order in the first sessions was conclusive, and that in the last merely void, nor was the case aided by stat. 3 *C.* 1. *c.*4.

(*b*) Upon this statute there hath been great diversity of opinion, whether or no the sessions have power thereby to make an original order (T.) in the case of bastardy, without the matter coming before them by way of appeal. But it seems now to be fully settled, that the sessions have power to make an original order. *Vid. Slater*'s case, *Cro. Car.* 470. *R.* v. *Greaves*, *Doug.* 632. 1 *Bott.* 509. in which case the original jurisdiction of the sessions to make orders in bastardy was recognized, and several cases cited to shew that the statute gives such jurisdiction.

T.

49 G.3. c.68.

For maintenance of bastard children.

By § 3. After reciting that "whereas parishes are often put to great expense in enforcing the performance of orders of maintenance made on the filiation of bastard children; it is enacted, that if any reputed father or any mother of such bastard child or children on whom any order of filiation or maintenance of such child or children shall have been made by the court of quarter sessions, or which shall have been made by two justices of the peace, and confirmed by the court of quarter sessions, or against which no appeal shall have been made to the court of quarter sessions, shall neglect or refuse to pay any sum or sums of money which he or she shall have been ordered to pay towards the maintenance or other sustentation for the relief of any such bastard child or children by any such order, it shall be lawful for any justice of the peace of the county, riding, division, city, liberty, or town corporate in which such reputed father or such mother shall happen to be, and the said justice is hereby required upon complaint (Y.) made to him by any one of the overseers of the poor of any parish, township, or place liable to the maintenance or support of such bastard child or children, or where such bastard child or children shall then be, and upon proof on oath of such order for the payment of such sum or sums of money, and of such sum or sums of money being unpaid, and of a demand of such payment having being made, and a refusal to pay the same, or that such reputed father or such mother hath left his or her usual place of abode, and hath avoided a demand thereof being made by such overseer, to issue his warrant (*a*) (Z. A. a.) to apprehend such reputed father or such mother, and to bring him or her before such justice or any other justice of the peace of the same county, riding, division, city, liberty or town corporate, to answer such complaint; and if such reputed father or such mother shall not pay such sum or sums of money as shall appear to the said justice before whom such reputed father or such mother shall be brought to be due and unpaid, or shall not shew to such justice some reasonable and sufficient cause for not so doing, it shall be lawful for such justice, and the said justice is hereby required to commit (B. b.) such reputed father or such mother to the public house of correction or common gaol of the said county, to be there kept to hard labour for the space of three months, unless such reputed father or such mother shall, before the expiration of the said three months, pay or cause to be paid to one of the overseers of the poor of the parish, township, or place on whose behalf such complaint as aforesaid was made, the said sum or sums of money so due and unpaid as aforesaid, and so from time to time and as often as such reputed father or such mother shall in manner aforesaid neglect or refuse to pay any other sum or sums of money that shall afterwards become due by virtue of and under such order after the expiration of or discharge from any such former imprisonment as aforesaid." (*b*)

Y.

Z. A. a.

B. b.

Z.
A. a.
A warrant for the commitment of the putative father

(*a*) Vide *R.* v. *Fulham* and *Martyr*, 13 *East*, 55. *post*, *per* Lord *Ellenborough*. A *summons* (Z.) should be issued in the first instance; see a form of a *warrant* (A. a.) and note (*a*), and Vol. V. tit. Warrant.

(*b*) *Robson* v. *Spearman and another*, *E.* 1 *G.* 4. 3 *B.* & *A.* 493. Declaration for assaulting plaintiff, and imprisoning him in a certain gaol, &c. for six days, and till he paid a large sum of money. Plea, not guilty. At the trial, *cor. Bayley* J., it appeared that plaintiff, against whom a regular order of filiation had been

49 G.3. c.68.

Expenses and costs subject to the discretion and allowance of magistrates or court of quarter sessions, as the case may be.

§ 4. Provides, and enacts, "That all such charges, expences, and costs shall be wholly subject to the discretion of the justices or court of quarter sessions who shall make such order of filiation; and the justices or court of quarter sessions are hereby authorised, if they shall see fit, to allow and order payment of the whole or any part thereof: Provided always, that the costs of apprehending and securing the reputed father, and of the order of filiation, shall not in any case exceed the sum of 10*l.*; and for securing the due payment of the same, after such allowance and order as aforesaid, all and every the powers, authorities, provisions, clauses, matters, and things contained in the said act passed in the eighteenth year of the reign of queen *Elizabeth*, concerning bastards begotten and born out of lawful matrimony, shall be respectively observed, used, and practised in the execution of this act, and shall be construed, deemed, and taken to apply as fully and effectually, to all intents and purposes, as if the said powers, authorities, provisions, clauses, matters, and things were specially recited and re-enacted in this act." (V. W. X.)

V.

18 Eliz. c.3. ante, p. 314.

The said bastards being now left to be kept at the charges of the parish where they be born.] For at that time they could have no other settlement. There were only two kinds of settlements then existing; the one was by birth, and the other where the person should have resided for the most part during the space of three years. So that till the child should be three years of age, it could possibly have no other settlement. And the place of birth continues to be the settlement of bastard children still, unless in some few excepted cases. *Vide* Vol. IV. § V. 1.

Two next justices.

Two justices in or next unto the limits where the parish church is.] By the case of *Rex* v. *Skinn*, *E.* 15 *G.* 2. 1 *Bott*, 476. it appears

previously made, had been committed by the warrant of the defendant *Spearman*, who was a magistrate, for not having paid the arrears due under that order. The warrant being produced, appeared to be for the commitment of the plaintiff to the gaol of *Morpeth*, *until he should pay the sum due, and legal accustomed fees, or until he should be otherwise delivered by due course of law.* The plaintiff having been imprisoned six days, paid the money, and was discharged. The learned judge being of opinion that the warrant was illegal, inasmuch as by the 49 *G.* 3. *c.* 68. § 3. the magistrate was empowered only to commit for three months, unless the money be sooner paid (whereas here the commitment was general, being until he should pay the money), directed the jury to find a verdict for the plaintiff against *Spearman*. The other defendant, who was the constable who executed the warrant, had a verdict. *Cross* Serjt. moved to enter a nonsuit. Here *Robson* was discharged, in point of fact, within the three months, for which, by 49 *G.* 3. *c.* 68. § 3., he might have been committed. If he had been detained beyond that period under the warrant, he might have had some ground for the action. *Abbott* C. J. I am of opinion that the warrant in this case was illegal, not being such as the justice had authority to make. It was his duty to have pursued the words of the stat. 49 *G.* 3. *c.* 68. If he had so done, it would have given the party committed the option either of paying the money, or of staying three months in prison, and being thereby altogether discharged from the payment. This warrant is for his imprisonment till he shall pay the money, and deprives the party of that advantage. The difference is a most material one, and it gives the party committed a right of action against the magistrate. See the other point decided in this case, *post*, Vol. III. *tit.* Justices, § VI.

of a bastard child, until he should pay a sum due for the maintenance of the child and legal accustomed fees, or *until he should be otherwise delivered by due course of law*, is bad, the magistrate not being authorized under 49 G.3. c.68. § 3. to make such a warrant.

Ex parte Addis, *M.* 1822. 1 *B.* & *C.* 87. Where an order of filiation is made, and the time for appeal is past; it cannot be enforced by commitment under stat. 18 *Eliz.* c. 3. for refusal to comply with it, but the magistrate must proceed under stat. 49 *G.* 3. *c.* 68. § 3. by commitment for three months; this being the third case mentioned in stat. 49 *G.* 3. *c.* 68. § 3. *viz.* "an order against which no appeal has been made."

18 El. c. 3. ante, p. 314.

that the words, "*in or next unto the limits*," are only directory, and that an order of maintenance by two justices not "in or next unto the limits where the parish church is," is valid. If therefore "two justices cannot agree in the order, or shall make no order," it should seem that in the one case a justice not being "the next," may join with either of the other in making the order, and in the other case, recourse might be had to two other justices, being as near the limits as such could be procured.

Child born in extra-parochial place.

If the child be born in an extra-parochial place, the two justices have no authority, it seems, to make an order of bastardy. *R.* v. *Baker*, 1 *Bott*, 476.

An order may be made at any time after the birth.

Shall and may by their discretion.] Here is no *time* limited for their proceeding in this matter; so that the order may be made at any time after the birth of the child.

And in the case of *R.* v. *Miles*, 1 *Sess. Cas.* 77. 1 *Bott*, 473., on motion to quash an order of bastardy, it was resolved that if the father run away and return, though 14 years after, yet an order to fix the child on him is good; for there is no statute of limitation in these cases.

6 G. 2. c. 31.

By stat. 6 *G.* 2. *c.* 31. § 3. (*ante*, p. 306.) if the reputed father be in prison, and no order be made in six weeks after the birth of the child, he may in such case be discharged from his imprisonment; but the order nevertheless made upon him afterwards will be good.

18 El. c. 3. ante, p. 314. Reputed father must be summoned.

Take order,] Herein they must proceed as in all other like cases, by giving the party accused an opportunity of being heard in his defence. In the case of *R.* v. *Cotton*, 1 *Sess. Cas.* 179. 1 *Bott*, 486. an information was moved for against the defendant, who with another justice made an order of bastardy upon one *Fitzgerald*, without summoning him to appear before them to make his defence. Upon appeal to the sessions he was acquitted, and put to great expences; which it was insisted was contrary to natural justice. By Mr. J. *Page*; no man in an office can be supposed to be so ignorant, as not to know it is against natural justice to convict a man without a summons; the examination ought to be so made that the truth may appear: and this must be by examining both sides; otherwise it is partial. Here was no taking by warrant, and therefore an action of false imprisonment would not lie; and this is the only method that can be used to punish the justice. Mr. J. *Probyn* — The principal objection about a summons is right in law and in reason; possibly an action on the case might be framed; there may possibly have been only an error in judgment, and it is hard to grant an information. Mr. J. *Lee* — If this were strictly a conviction against which no appeal lies, an information ought to be granted; but the matter is not so very strong in the case of orders. And the rule was discharged.

To convict a man without a summons is against natural justice.

Summons by a third justice is sufficient.

That a summons by a *third justice* is sufficient, is decided in the case of *R.* v. *Taylor and Neale*, 2 *Sess. Cas.* 192. *Cas. Temp. Hardw.* 112.

The order will be valid, though the putative father be not present at the examination.

And although it is indispensable that the putative father should be summoned to appear, previously to an order being made upon him, his presence during the mother's examination before the justices out of sessions, is not necessary to the validity of such order. *R.* v. *Upton Gray*, *Cald.* 308. 1 *Bott*, 482.

If a person charged with a bastard child is under any incapa-

city of attending by illness or otherwise, the justices may, and ought to receive evidence on his behalf, but not otherwise. It is the practice in *B. R.* not to hear exceptions to an order of bastardy in the absence of the person charged, except under such circumstances as above mentioned. *R.* v. *Taylor* and *Neale*, *ante*, p. 317. *et Serjeant Hill's MSS.*

18 El. c.3.

By charging such mother.] *R.* v. *Ellen Taylor*, late *Bent*, 3 *Burr.* 1681. 1 *Bott*, 479. She was delivered of a bastard child in the parish of *Clifton*. After which, and before any order made, she married one *Abraham Taylor*, of the parish of *Middleton*. The overseers of *Clifton* applied to the justices, who made an order of filiation, charging her with 8*d.* a week towards the relief of the parish. She pleaded her utter inability, and refused to pay. Upon which the justices committed her to the house of correction. She was brought up by *habeas corpus*, and her counsel moved for her discharge, insisting upon the illegality of her commitment; for that, being a married woman, she was not an object of the justices' jurisdiction, and the husband was not summoned. — But by the court — A feme covert is liable to be prosecuted for crimes committed by her. This woman has disobeyed the order of the justices, and the statute prescribes the punishment here inflicted upon her. There is no need to summon the husband in a criminal prosecution against the wife.

Mother marrying before the order is made, may be committed for disobeying it.

R. v. *Ravenstone*, 5 *T. R.* 373. 1 *Bott*, 483. *R.* v. *Clayton*, 3 *East*, 58. 1 *Bott*. 484. The examination of a pregnant woman taken by a justice, under the statute 6 *G.* 2. *c.* 31., is evidence sufficient to authorise the sessions to make an order of filiation on the putative father, though the woman be dead. — By the court — The examination having been taken before a magistrate in the course of a judicial proceeding, under stat. 6 *G.* 2. *c.* 31. is certainly admissible evidence, like the depositions taken under stat. 1 & 2 *P.* & *M.* c. 13.; and being admissible, and not contradicted by any other evidence, it seems to be conclusive. We cannot indeed compel the justices at the sessions to decide on the weight of evidence; but when we determine that this evidence is admissible in point of law, and that the justices may make the order applied for, though the woman be dead, we have no doubt but that they will also be of opinion that this evidence is conclusive against the party against whom the application has been made. This was a case stated by the sessions who had rejected this evidence, and discharged the defendant from his recognizance.

Mother dying before the orde is made.

Where an order of bastardy stated, that, " *E. A.*, single woman, on the 13th of *September*, 1810, was delivered of a *dead born* male bastard child," Ld. *Ellenborough* C. J. said, " all the provisions in the several statutes assume the birth of a child, which must of course be born alive." *Grose* J. " No dead substance is the object of legislative provision in any of the acts." Order quashed. *R.* v. *De Brouquens*, 14 *East*, 277. See *post*, p. 325.

No order of filiation, &c. can be made unless the chil be born *alive*.

With the payment of money weekly, or other sustentation.] That is, to the overseers for the use of such child. But whether the overseers shall have the sole application of the money, and ordering of such child; or the reputed father may take the child from the parish and provide for it himself, hath been doubted,

Whether the reputed father may take the child.

18 Eliz. c.3. and seemeth not yet to have been fully settled. *Sed vid. post*, p. 331.

Such party so making default in not performing the said order to be committed.] Until default shall be made, the justices have no power to commit, or to require sureties for the performance of the order, or for appearing at the sessions. *Q.* v. *Chaffey*, 2 *Ld. Raym*. 858. 3 *Salk*. 66. 1 *Barnard*. 261. 1 *Bott*, 487.

Note. The power of the *justices* to make an order of filiation and maintenance is first given by stat. 18 *Eliz. c*.3. The power of the *sessions* to make such an order is first given by 3 *Car*. 1. *c*.4. § 15., and that act gives the sessions the like powers to those conferred by 18 *Eliz*. on justices out of sessions.

In *Q.* v. *Weston*, 1 *Salk*. 122. *Holt* C. J. said, that the sessions may commit as the two justices might have done, unless the party put in surety to perform the order, or to appear at the next sessions, which implies an appeal from the same court to the same court, a thing not usual in other like cases, an appeal importing the removal of a cause from an inferior to a higher jurisdiction. On the other hand, L. C. J. *Pratt*, in the case of *R.* v. *Cleg*, 1 *Str*. 475. said, that upon an original order at sessions, the party hath no opportunity to relieve himself by way of appeal, and from hence urges the extreme necessity of a strict and regular summons of the reputed father lest he happen to be condemned unheard.

But although the sessions have an original power to make an order of bastardy, they cannot order the father to give security for the performance of that order, as appears by the case of *R.* v. *Fox*, 1 *Bott*. 477. and *R.* v. *Price*, 6 *T. R*. 147. 1 *Bott*, 510.

But if the sessions in such a case make an order of bastardy, *and also order the putative father to give security for the performance of that order*, the court of *K. B.* will quash the latter part, and confirm the former part of the order. *R.* v. *Price*, 6 *T. R*. 147. and *R.* v. *Fox* there cited.

Under stat. 18 *Eliz*. The justices *out of sessions* have no authority to require a recognizance unless the party disobey the order of maintenance; and therefore where the sessions make an original order of filiation and maintenance, they cannot require a recognizance until such order is disobeyed, in which case the party may be taken up and committed, unless he give security for performance, pursuant to stat. 18 *Eliz*. *c*.3. § 2. *ante*, p.314.

IV. (2) Of the Form of the Order.

R. R. The usual Form of an Order of Filiation and Maintenance by two Justices, pursuant to stats. 18 *Eliz. c*. 3. and 49 *G*. 3. *c*. 68.

County of ——— } *THE order of* J. P. *and* K. P. *Esquires, two of his majesty's justices of the peace in and for the said county, one whereof is of the quorum, and both residing* [*in* or] *next unto the limits where the parish church is situate, of the parish of* ——— *in the said county, made the* ——— *day of* ——— *one thousand eight hundred and* ———, *concerning a* (fe) *male bastard child lately born in the said parish, of the body of* A. M. *single woman.*

Whereas it hath been duly made to appear unto us the said justices, as well upon the complaint of the churchwardens and overseers of the poor of the parish of ——— in the said county, as upon the oath of A. M *single woman, that she the said* A. M. *on or about the ——— day of ——— now last past, was delivered of a* (fe) *male bastard child, in the said parish, and that the said bastard child is now chargeable to the said parish, and likely so to continue; and further, that* A. F. *of ——— in the county of ——— did beget the said bastard child on the body of her the said* A. M.: *And whereas the said* A. F. *hath appeared before us, in pursuance of our summons for that purpose, but hath not shewn any sufficient cause why he the said* A. F. *shall not be adjudged to be the reputed father of the said bastard child* [or, *And whereas it hath been duly proved to us upon oath, that the said* A. F. *hath been duly summoned to appear before us the said justices, to the end that we might examine into the cause and circumstances of the premises: but he the said* A. F. *hath neglected to appear before us, according to such summons:*] *We therefore upon examination of the cause and circumstances of the premises, as well upon the oath of the said* A. M. *as otherwise, do hereby adjudge him the said* A. F. *to be the reputed father of the said bastard child.*

And thereupon we do order, as well for the better relief of the said parish, as for the sustentation and relief of the said bastard child, that the said A. F. *shall and do forthwith, upon notice of this our order, pay or cause to be paid to the said churchwardens and overseers of the poor, or to some or one of them, the sum of ——— as and for the reasonable charges and expences incident to the birth of the said bastard child, and also the sum of ———* (a) *as and for the reasonable costs of apprehending and securing the said* A. F. *and of this our order of filiation; and the further sum of ——— for the maintenance of the said bastard child to the time of making this our order; all which said charges, expences, costs, and maintenance have been duly and respectively ascertained, as well on the oath of ———* (b), *one of the said overseers of the poor, as otherwise before us the said justices, and are hereby by us allowed. And we do also hereby further order that the said* A. F. *shall likewise pay or cause to be paid to the churchwardens and overseers of the poor of the said parish, for the time being, or to some or one of them, the sum of ——— weekly and every week from this present time, for and towards the keeping, sustentation, and maintenance of the said bastard child, for and during so long time as the said bastard child shall be chargeable to the said parish. And we do further order, that the said* A. M. *shall also pay or cause to be paid to the churchwardens and overseers of the poor of the said parish for the time being, or to some or one of them, the sum of ——— weekly and every week, so long as the said bastard child shall be chargeable to the said parish, in case she shall not nurse and take care of the said child herself. Given under our hands and seals the day and year first above written.*

One whereof is of the quorum.] Many orders formerly were quashed for want of setting forth that one of the justices was of

(a) This sum is not to exceed 10*l*. Vide stat. 49 *G*.3. *c*. 68. § 1. 4.

(b) See form of Overseers' Affidavit of Expences, *post*, (S).

26 G. 2. c. 27.

the *quorum*, but now by stat. 26 *G.* 2. *c.* 27. no order shall be quashed for that defect only.

The examination must be by two justices in the presence of each other.

Whereas it hath been duly made to appear unto us.] *R.* v. *Beard*, 2 *Salk.* 478. 1 *Bott*, 481. The examination of the woman must be by two justices, as well as the ordering part; for the examination is a judicial act, and ought to be by both; and it is not enough that one should examine, and make report to the other; but if they be both present, and one only examine, it is well enough, for it is in fact the examination of both.

So in *Billings* v. *Prinn* and *Delabere*, Esqs. 2 *Bla. R.* 1017. 1 *Bott*, 482. An action of trespass and false imprisonment was brought by the plaintiff, for committing her to prison for refusing to filiate a bastard child. She was examined severally, at separate times (but in the same day) and in separate places by the two justices the defendants, and they separately signed the warrant of commitment. On trial at the assizes, a verdict was given for the plaintiff, with 5*l.* damages. It was now moved for a new trial. By the Court — There is no use in appointing two or more persons to exercise judicial powers, unless they are to act together. Separate examinations by different magistrates may produce different facts. On which then is the adjudication to proceed? It is exceedingly clear, that in case of an action thus brought to try the validity of the commitment, it cannot be supported by law.

Whether the complaint must be by the churchwardens and overseers. Order made on application of overseers of a township valid.

As well upon the complaint of the churchwardens and overseers of the poor of the said parish, &c.] An order stated to be made upon the application and complaint of the overseers of the poor of the township of *H. U. Q.* in the parish of *H.* is sufficient without stating that it is a township maintaining its own poor. *Rex* v. *Hartington-Upper-Quarter*, 4 *M.* & *S.* 559.

It has been said that an order made without the complaint of the parish officers, is not good. *Blackerby*, 44. But in *Rex* v. *Buckall*, 1 *Barnard.* 261. 1 *Bott*, 482. where it was objected, that the order did not appear to be made upon complaint of the parish, it was answered, that the statute (18 *El. c.* 3.) does not require that the parish should complain, but gives the justices power to make such order on the complaint of any other. And the order, as to that part, was confirmed.

But with respect to any alteration in this particular by stat. 6 *G.* 2. *c.* 31. one of the purposes, it seems, for which the statute was made, was to restrain the justices from proceeding on the application of every lewd woman pretending to be with child, &c. till complaint by the churchwardens, &c. *Rex* v. *Fox*, 1 *Bott*, 473. cited by Lord *Kenyon* from his own MS. 6 *T. R.* 148—151.

R. v. *Martyr and Fulham*, 13 *East*, 55. This came on upon a rule calling upon the defendants, justices of the peace for the county of *Surrey*, to shew cause why a mandamus should not issue to them to take the examination of *Martha Barnett*, a pauper of the parish of *Dunsfold*, in that county, touching the reputed father of a bastard child of which she was pregnant; and also commanding them to issue their summons directed to *W. Foster* of the same parish, to compel his appearance before them, to answer for having disobeyed an order of bastardy made against him. The application was founded upon the affi-

davit of *F. Sadler*, stating, that in 1787, *Dunsfold* and other parishes united to adopt the provisions of stat. 22 *G*. 3. *c*. 83. for the better relief and employment of the poor; and that, under that act, he was duly appointed guardian of the poor for *Dunsfold*; that at a meeting of justices on the 16th of *June* last, he, as such guardian, attended with *Martha Barnett* to filiate the bastard child of which she was then pregnant, and informed the defendants then present, that he had agreed with the parish of *Dunsfold* to continue in the office of guardian for the year ensuing, and in that character required them to take her examination; but they refused to take cognizance of the measure: that he also applied to them at the same time as such guardian for a summons against *W. Foster*, to appear before them for neglecting to obey an order of bastardy, which they also refused to issue. — The defendants in answer stated, that considering *Sadler* not to have been legally continued or appointed guardian of the poor at the time, and that they could not regularly investigate any complaint of the kind not preferred by a regular parish officer, they refused to take the examination of *Martha Barnett* for filiating her bastard, or to issue the summons to *Foster* for disobeying the order of bastardy. — Against the rule it was contended, that by stat. 6 *G*. 2. *c*. 31. § 1. such applications must be made "by *the overseers of the poor*, &c." in whose place, in that behalf, the guardian is appointed by stat. 22 *G*. 3. *c*. 83. and 33 *G*. 3. *c*. 35., as was expressly decided in *Rex* v. *Nottingham* (*E*. 10 *G*. 2. 1 *Const's Bött, tit. Bastards*, § 5. 482.), and by *Foster* J. in *Rex* v. *Fox* (cited by Ld. *Kenyon* from his own MS. 6 *T. R*. 148—151.). — *Per Cur*. The distinction was not taken in those cases, between the complaint of an officer *de facto*, and of one *de jure*; and if *Sadler*, the guardian *de facto*, acting for the parish in that character, could not make the complaint, there was no other officer who could have made it. Then it was further urged that it had been held in other cases, that the acts of a parish officer not duly appointed were invalid: that in *Rex* v. *Clifton* (2 *East*, 175.) *Lawrence* J. considered that the conclusion to be drawn from what Ld. *Kenyon* had said in *Rex* v. *Wymondham* (6 *T. R*. 552.) was, that if it had appeared that the officers who signed the certificate were not a majority of the whole number of officers *de jure*, it would have been bad. [They then undertook to shew that *Sadler* was not a legally constituted guardian; but this the court thought unnecessary.] As to the summons they contended that stat. 49 *G*. 3. *c*. 68. § 3. was mandatory on the justice to issue his warrant to apprehend in the first instance, and not a summons only, which was applied for in this case. The court did not hear counsel on the other side: but, by Lord *Ellenborough* C. J. The person making the application to the magistrates being guardian of the poor of *Dunsfold de facto*, acting in that character, and recognised as such by the parish, and no objection being made by the general overseers of the poor to this person making the complaint to the magistrates as against one who usurped their authority, we do not think that the magistrates could enter upon such an occasion into the objection that he was not duly appointed guardian. As to the cases referred to touching Certificates, requiring them to be signed by the full number of officers *de jure* competent to bind the parish, they are very different. Where the parish is to be bound thereafter

A guardian appointed under 22 G. 3. c. 83. may make the application.

Officers *de jure*.

Rex v. Martyr and Fulham.

by the acts of its officers, it must be shewn that they had a competent authority; but here *Sadler* did no act assuming to bind the parish, but only applied to the magistrates to take the examination of the woman, and put the measure in a course of inquiry. Then as to the objection upon the late act, it is the general duty of magistrates in cases of this sort, where the complaint is merely for non-payment of money, to issue a summons in the first instance, before they grant a warrant of apprehension, and it requires very strong words to take away the necessity of the summons. I remember a case some years ago, where, though the words of an act authorising the magistrate to issue his warrant for a purpose of this kind were very general, yet the court held it to be the duty of the magistrate to issue his summons in the first instance. And I cannot think that the words here used are sufficiently strong to take away the power of issuing his summons. *Bayley* J. The use of the summons is to give the party an opportunity of shewing, if he can, that he has paid the money and obeyed the order, and so to shew that there is no ground for the complaint to authorise his apprehension. *Per Curiam.* R. A. See Vol. III. tit. Justices of the Peace, p. 156, 157. and Vol. V. tit. Warrant.

Summons.

Mother to be examined on oath.

As upon the oath of the said A. M.] It seemeth that the mother may be examined upon oath, concerning the reputed father, and of the time and other circumstances; for that in this case the matter and the trial thereof dependeth chiefly upon the examination and testimony of the mother. *Dalt. c.* 11.

The sex to be set forth.

Was delivered of a (fe) *male bastard child.*] *Rex* v. *England*, 1 *Stra.* 503. 1 *Bott*, 497. An order was quashed, because neither the sex of the bastard, nor the name of it was mentioned; only, a certain bastard child born of the body of such a woman.

And the parish where born.

At ——— in the said parish of ———.] *Q.* v. *Cash*, *Sett. & Rem.* 59. The order did not set forth that the child was born in the parish; and by the statute the justices cannot make an order to compel a man to contribute towards the maintenance of a bastard child, but in case of that parish where the child was born; and it was quashed for this reason.

Rex v. *Butcher*, 1 *Str.* 437. 1 *Bott*, 499. Exception was taken to an order of bastardy, that it did not appear that the child was born in the parish to which the relief is ordered; for it was, *We, two justices of the borough of* Lime Regis, *residing within the limits where the parish church is, within which parish the child was born* —— which is only an averment, that the justices resided in that parish where the child was born, but that might not be the same parish ordered to be relieved. And for this fault the order was quashed.

Rex v. *Childers*, 1 *Barnard.* 326. On a rule to shew cause why an order of two justices for relief of a bastard child, and an order of sessions confirming the same, should not be quashed, it was objected, that it was not directly adjudged that the child was born in the parish of *Staplehurst*, and yet the order requires the defendant to pay the sum of 45*s* to the churchwardens of that parish to reimburse them. It was answered that it doth sufficiently appear in the order that the child was born there; for it adjudges that the defendant should pay this sum for the charges the parish of *Staplehurst* were at upon account of the woman's lying-in there.

But the Court said, that they do not allow of inferences to give the justices jurisdiction; and accordingly quashed both the orders.

R. v. *Greaves, Nels. Bast.* The parish where the child is born is only to be indemnified: and if the bastard has acquired a settlement elsewhere, the father is then discharged.

And in *R.* v. *Stanley, Cald.* 172. 1 *Bott*, 504. It appearing that there was no adjudication, that the child was *born* in the parish charged with its maintenance, nothing more being stated than that it was *chargeable to the parish, and likely so to continue.* By the Court — Order quashed.

Chargeable.

Chargeable to the said parish.] Order to provide for a bastard child: Exception was taken, that the order doth not set forth, that he is chargeable to the parish, or likely to be so. And quashed by the Court. *Comb.* 30.

But in *R.* v. *Matthews,* 2 *Salk.* 475. 1 *Bott,* 496. Exception was taken that the order doth not set forth that the child is likely to become chargeable. But this exception was over-ruled; for that it is self-evident that every bastard child is likely to become chargeable.

So also in *R.* v. *Hartington-Upper-Quarter,* 4 *M. & S.* 559. an order of filiation upon the putative father of a bastard child, stating that the chi.d "*is likely* to become chargeable," was held sufficient, without shewing that it was *actually chargeable.*

Husband being absent, proof of carnal knowledge not sufficient.

And further, that A. F. *of* ——— *in the said county, yeoman, did beget the said bastard child.*] *R.* v. *Browne,* 2 *Stra.* 811. Upon an order of bastardy it was stated, that the husband had been absent six years, and that during his absence the defendant *had carnal knowledge* of the wife, and therefore they adjudge him to be the putative father. But by the Court — This order must be quashed; for his lying with her is not a sufficient reason to infer him the father of this child; and though the justices need not shew the grounds upon which they go, yet if they do, and they be not sufficient, their order will be bad.

Whether the mother need be examined in the presence of the reputed father.

And whereas the said A. F. *hath appeared before us.*] In the case of *R.* v. *Upton Gray, Cald.* 308. 1 *Bott,* 482. It was determined, that it is not necessary to the validity of an order of filiation that the putative father should be present at the examination of the woman before the two justices.

There must be an express adjudication.

Do hereby adjudge.] Q. v. *Weston,* 2 *Ld. Raym.* 1197. 1 *Salk.* 122. The great objection which stuck long with the Court was that it was said in the order, we the said justices *doth* adjudge, instead of *do* adjudge; and after the case had depended two terms, and been several times stirred, the Court for that exception, the last day of the term, quashed the order.

And afterwards, the same justices made another order with the very same fault in it, *viz. doth* adjudge: and upon a *certiorari* that was quashed. 2 *Ld. Raym.* 1198.

Adjudge the said A. F. *to be the reputed father.*] *R.* v. *Perkasse,* 2 *Sid.* 363. An order was quashed, because there was no adjudication, that the person against whom the complaint was made, was the reputed father.

So in *R.* v. *Pitts, Dougl.* 661. The court of *B. R.* quashed an order of bastardy which only stated "whereas it hath ap-

peared to us," &c. without an *express adjudication* that the person charged was the putative father.

The justices cannot adjudge a person *not* to be the putative father.

R. v. *Jenkins*, 2 *Sess. C.* 161. 2 *Str.* 1050. 1 *Bott*, 474. Motion to quash an order of two justices, whereby they adjudge, that such a person is *not* the putative father of a bastard child, and therefore they discharge him; and the rather, because in such a case the parish cannot appeal, because an appeal is only when the party refuses to give security to come to sessions. And by the whole Court, the two justices have no such authority; for their whole power depends on the statute of 18 *Eliz.*, and that is only to take order for punishment of the parties, and for relief of the parish, and this order is for neither the one nor the other.

A gross sum may be ordered for defraying expenses then incurred, or by-gone maintenance.

The sum of——for and towards the reasonable charges and expences incident to the birth of the said bastard child.] The stat. 49 *G.* 3. *c.* 68. expressly enacts § 1. that the reputed father shall be liable to these charges.

And also the sum of—— as and for the reasonable costs of apprehending, &c.] The above stat. also enacts that the reputed father shall be liable to those costs, not exceeding 10*l.* which limitation of the amount seems to make it necessary that they should form a distinct item in the order.

The 1st and 4th sections of stat. 49 *G.* 3. *c.* 68. apply to the aforesaid charges, expences, and costs; and for securing the due payment thereof, § 4. enacts that the powers of stat. 18th *Eliz.* shall be used which authorise a commitment until securities are put in to perform the order, or to appear at the sessions, &c.

And the further sum of——for the maintenance of the said bastard child to the time of making this our order.] *Q.* v. *Odam*, 1 *Salk.* 124. 1 *Bott.* 497. Order for maintenance of a bastard child was excepted to, because the defendant is upon sight of the order to pay 9*l.* in gross; and after that, so much weekly. And it was held good; for by the statute the justices are to take order for relief of the parish, and keeping of the child, by payment of money weekly, or other sustentation: and this may be only indemnifying the parish for money laid out before the reputed father was found.

Ex parte Addis, *M.* 1822. 1 *B.* & *Cr.* 87. An objection to a commitment for disobeying an order of filiation, that the order being for by-gone maintenance was bad, was given up on citing *Q.* v. *Odam*, and *Q.* v. *Smith*, 1 *Bott*, pl. 667. *R.* v. *Moravia*, *id.* pl. 680. *R.* v. *Fox*, *id.* pl. 682. *R.* v. *Hill*, 1 *Sid.* 326. *R.* v. *Hartington*, 4 *M.* & *S.* 559. But *semble*, that these cases do not apply where the child was dead when the order of filiation was made. See 1 *B.* & *C.* 90. n. (*a*)

If an order directs a sum to be paid towards the lying-in and maintenance, it seems to be enough, without stating that the sum was expended by the overseers. *R.* v. *Hartington-Upper-Quarter*, 4 *M.* & *S.* 559.

How long such payments shall be ordered to continue.

During so long time as the said bastard child shall be chargeable.] *Rex* v. *Barebaker*, 1 *Salk.* 121. 2 *Salk.* 478. 1 *Bott*, 495. An order to pay so much money by the week, till the child shall be fourteen years of age, was adjudged to be bad; for the justices have no power but to indemnify the parish; and that is only

to oblige him (the father) to maintain the child as long as it is or may be chargeable.

An order that the putative father should pay so much a week, until it should be able to get its living by working, was quashed; it should have been for so long time as the child was chargeable to the parish. 1 *Vent.* 210.

But in *Rex* v. *Street*, 2 *Str.* 788. 1 *Bott*, 498. An order of bastardy was made to pay so much weekly till the child was nine years old, if it should so long live. And by the Court — It is a good order, for we cannot intend it able to provide for itself sooner.

So in *Rex* v. *Buckall*, 1 *Barnard.* 261. Exception was taken that the order appointed the sum of 2*s.* to be paid weekly till the child should come to the age of twelve years, without saying, if the child shall be so long chargeable to the parish. It was answered, that indeed the old authorities lay it down in general that orders of bastardy, as well as other orders relating to the poor, must be under the limitation mentioned; but the latter authorities have been, that orders of bastardy need not: and this, it was said, is founded upon good reason; for there cannot be any reasonable intendment, that bastards, who have no kindred, will have provision from any body, till such an age as is mentioned in the order. And of that opinion was the court, and confirmed the order as to that point.

But it is best in this and all such like cases to hold to the statute; and the statute here only gives power to the justices *to take order for the relief of the parish where the child shall be born.*

The order must be for maintenance only.

In *Brown*'s case, *Comb.* 448. it was said, the justices cannot order a sum for putting out the child an apprentice.

But in the aforesaid case of *Rex* v. *Buckall*, 1 *Barnard.* 261. where it was objected, that the order was for the reputed father to pay 4*l.* to the overseers for binding the child out apprentice, when it should come to the age of 12 years, and did not say, if the child shall want it; so that though the child should be provided for in any other way, the sum must be still paid to the overseers, the objection was overruled by the court; and the order, as to that, held good.

But it seemeth not necessary to encumber the order therewith; for it may be the same thing if the parish bind him out, and pay the money; for until such sum shall be run off by the weekly payments, so long the child continues chargeable.

Poor child living with its mother for nurture.

For an order of two justices upon the churchwardens and overseers of one parish for relief and maintenance of a poor child settled in that parish, but residing with its mother in another, for nurture. See *R.* v. *Hemlington*, Vol. IV. § v. 3. p. 281.

Soldier disobeying an order may be committed.

The justices have authority to commit *a soldier in actual service* for disobeying an order of bastardy; for he is not protected against such commitment by the mutiny act. *Rex* v. *Archer*, 2 *T. R.* 270. 1 *Bott*, 480. Et vide *Rex* v. *Bowen*, ante, p. 305. n. (*a*).

IV. (3.) Appeal against the Order.

18 El. c. 3.

By the aforesaid stat. 18 *Eliz. c.* 3. the mother or reputed father refusing to perform the order of the two justices, shall be committed, unless they shall put in sufficient surety to perform the said order, " or else personally to appear at the next general sessions of the peace, to be holden in that county where such order shall be taken; and also to abide such order, as the said justices of the peace, or the more part of them, then and there shall take in that behalf (if they then and there shall take any): and that if, at the said sessions, the said justices shall take no other order, then to abide and perform the order before made, as is above said."

49 G. 3. c. 68. Allowing an appeal to the quarter sessions, on giving notice and entering into recognizance.

And by stat. 49 *G.* 3. *c.* 68. § 5. it is enacted, " That any person or persons, who shall think himself, herself, or themselves aggrieved by any order made by such justices as aforesaid under the provisions of this act, and not originating in the quarter sessions (*a*), may appeal to the next general quarter sessions of the peace to be holden for the county where such order shall be made, on giving notice to such justices or to one of them, and also to the churchwardens and overseers of the poor of the parish on whose behalf such order shall have been made, or to one of them, ten clear days before such general quarter sessions of the peace at which such appeal shall be made, of his, her or their intention of bringing such appeal, and of the cause and matter thereof, and entering into a recognizance (U) within three days after such notice before some justice of the peace for such county, with sufficient surety conditioned to try such appeal, and abide the judgment and order of, and pay such costs as shall be awarded by the justices at such quarter sessions, which said justices at their said sessions, upon proof of such notice being given, and of entering into such recognizance as aforesaid, shall and they are hereby required to proceed in, hear, and determine the causes and matters of all such appeals, and shall give such relief and costs to the parties appealing or appealed against, as they in their discretion shall judge proper; and such judgments and orders therein made shall be final, binding and conclusive to all parties concerned, and to all intents and purposes whatsoever."

U.

No appeal without notice, and entering into recognizance, shall be heard.

And by § 7. it is enacted, " That no appeal in any case relating to bastardy shall be brought, received, or heard at the said quarter sessions, unless such notice shall have been given, and such recognizance shall have been entered into in manner aforesaid, according to the provisions of this act."

Defendant personally to appear upon a motion made to quash the order.

Personally to appear.] *R.* v. *Matthews*, 2 *Salk.* 475. 1 *Bott*, 496. It was moved to quash an order for maintaining a bastard child. It was answered, that no order relating to a bastard child can be quashed, unless the reputed father be present in court. Unto which the court assented. But it appearing to be a hard case, a rule was made to shew cause. On shewing cause, it was

(*a*) Although there is no appeal against an order of bastardy made at the sessions, yet it may be removed into the Court of K. B. by writ of *certiorari.* 2 *Nol. P. L.* 262. 3d Edit.

quashed; but the court would not quash it till the reputed father came into court.

49 G. 3. c. 68.

R. v. *Gibson*, 1 *Blac. Rep.* 198. 1 *Bott*, 511. It was moved to quash an order of bastardy; which, being indefensible, was accordingly done; the defendant entering into recognizance to abide the order of the sessions below; which was the reason (the court said) why a personal appearance of the defendant was in these cases always required. In *R.* v. *Luffe*, *ante*, the defendant's personal attendance was, by mutual consent, waved.

What shall be deemed the next sessions.

To the next general quarter sessions.] That is to say, the next general quarter sessions after notice of such order. 3 *Keb.* 551.

For the county where such order shall be made.] *Rex* v. *Coyston*, 1 *Sid.* 149. 1 *Bott*, 504. Resolved, that this shall be intended of the next sessions of that part of the county where it was made, and not at the next sessions in any county at large; for that would be mischievous in many counties, where there are several sessions in distinct parts of the county.

Order either quashed or confirmed upon the merits is conclusive.

To try such appeal and abide the judgment and order, &c.] *Rex* v. *Tenant*, 2 Ld. *Raym.* 1423, 4. 2 *Stra.* 716. 1 *Bott*, 511. The order of two justices being quashed upon the merits by the sessions on appeal, the defendant is thereby legally acquitted, and cannot be drawn in question again for the same fact.

If the two next justices make an order, and the party appeal to the next sessions, and they alter or discharge (upon the merits), or confirm that order; no other sessions can order any thing contrary thereto, for the order upon the appeal is final. *Pridgeon's case*, *Cro. Car.* 350. *Bulst.* 255. 1 *Bott*, 506.

For a second sessions cannot vacate an order made by two justices and confirmed by a former sessions. *R.* v. *Arundel*, 1 *Sess. Cas.* 234. 1 *Bott*, 509.

But not if quashed for want of form.

But if the order be quashed for want of *form*, it is as no order at all; and therefore the justices may proceed *de novo*. Or the sessions may, under the statute 5 *G.* 2. *c.* 19. amend the order in point of form, and then proceed on the merits.

Respondents begin on appeal.

R. v. *Knill*, 12 *East*, 50. Upon appeal against an order of bastardy, it is incumbent upon the respondents to begin to support the order, whatever may be the practice of the court in that respect.

By 49 G. 3. c. 68. § 5. ten clear days' notice of the intention to appeal is required: Held, that the ten days are to be taken exclusively, both of the day of serving the notice, and the day of holding the sessions.

R. v. *The Justices of Herefordshire*, *E.* 1 *G.* 4. 3 *B.* & *A.* 581. One *Joseph Stinton* having had an order of filiation made on him, as the father of a bastard child, served a notice of appeal to the quarter sessions for the county of *Hereford*, on the morning of the 9th of *October*. The sessions were holden the 19th of the same month, and the court refused to enter on the appeal, being of opinion that the notice was insufficient; the stat. 49 G. 3. *c.* 68. § 5. requiring that the person aggrieved by such an order should give notice ten clear days before the quarter sessions, of his intention to appeal, and the cause and matter thereof. *W. E. Taunton* having obtained a rule *nisi* for a *mandamus* to the justices to receive the appeal, *Abraham* now shewed cause against it, and relied on the words of the statute, which could only be satisfied by a notice wherein there should be ten clear days, exclusive of the day of serving it and the day of holding the sessions. *W. E. Taunton*, *contrà*, contended that the word "clear" meant only complete days; and referred to the computation of the octave of

Saint Hilary, and the *quarto die post* of the term, to shew that the days of a stated period were in law generally reckoned both inclusively, and that all that the legislature had in view, in this instance, was to prevent such a computation being used. But the court were of opinion, that ten clear days meant ten perfect intervening days between the act done and the first day of the sessions, and held therefore, that the notice was defective; and they referred to *Roberts* v. *Stacey*, 13 *East*, 21. Rule discharged.

Semble, that the entering into the recognizance required by 49 G. 3. c. 68. § 5. before the justices, who make an order of bastardy, does not dispense with the necessity of giving such justices notice of appeal against the order, the statute requiring the party to give notice of bringing such appeal, "and of the cause and matter thereof." But held, that a parol notice of such appeal, and of the cause and matter thereof, will be sufficient.

R. v. *The Justices of Salop*, *T.* 2 *G.* 4. 4 *B.* & *A.* 626. A rule had been obtained, calling upon the defendants to shew cause why a writ of mandamus should not be directed to them, commanding them to cause continuances to be entered, and hear the appeal of one *Joseph Oliver* against an order of two magistrates, under stat. 49 *G.* 3. *c.* 68. § 5. whereby the said *Joseph Oliver* was adjudged to be the reputed father of a bastard child. It appeared, by the affidavits upon which the rule was obtained, that the order in question was made on the 30th *January*, that immediately upon the order being made, the appellant entered into the recognizance required by the statute, before the justices who made the order; and that a regular notice of appeal to the quarter sessions, to be holden on the 30th *April*, was served, on the 9th *April*, upon the churchwardens and overseers of the parish on whose behalf the order was made. When the appeal was called on for trial at the sessions, it was objected by the respondents, that no notice had been given to the justices who made the order, of the intention to bring the appeal, and of the cause and matter thereof, as required by the statute; and upon the sessions holding such notice to be necessary, the appellant offered to prove, that, previous to entering into the recognizance, he gave a parol notice to the justices who made the order, of his intention to appeal against it, and of the cause and matter of such appeal; but the sessions would not allow such notice to be proved, and dismissed the appeal. The rule was obtained upon two grounds; first, that the entering into the recognizance before the justices who made the order, dispensed with the necessity of giving them a notice of appeal; and, secondly, that in case a notice to the justices was necessary, the sessions ought to have received the evidence of a parol notice, which was tendered by the appellant. After argument—*Bayley* J. said, I am of opinion, that in this case the sessions ought to have received the evidence of the parol notice of appeal which was tendered by the appellant. It may be convenient, that a notice of appeal, particularly where it is a notice of the cause and matter of the appeal, should be in writing; and in many cases the statute giving the appeal requires that there should be a written notice, but we cannot say that a notice in writing is necessary, where it is not required to be in writing by the clause in the statute, which directs a notice to be given. An appeal is usually allowed by statute on certain conditions; and when one of those conditions is, that the party appealing shall give a notice of his appeal, it would be to add a further condition, if we were to hold that such notice must be in writing. *Holroyd* J. concurred. R. A. (a)

(a) *Abbott* C. J. and *Best* J. had left the Court.

V. Of the Right of the Father or Mother to the Custody of the Child.

In the case of *Richards and Samon* v. *Hodges*, 2 *Saund.* 83. 1 *Bott*, 464. this point came in question, but the matter went off on an error in the proceeding; and the point was not spoken to by the court.

Q. v. *Smith*, *Sett. and Rem.* 64. 1 *Bott*, 497. Order to pay 1*s.* a week till the child is eight years old. It was objected, that it should be so long as the child is chargeable; possibly he may gain a settlement; or a person may give him an estate; or the father may take him. By the Court — This is only a remote possibility. As to the father's taking him, he ought to have done it at first; and by suffering the order to be made, it shall be deemed a refusal in law; besides, he shall not then be suffered; he may sell him, or make away with him, as too often happens. In the following case, however, the question came particularly under the consideration of the court.

The putative father may take his bastard child from the *parish*, and maintain him himself.

Newland v. *Osman*, *T.* 27 *G.* 2. *MS.* (B.) 1 *Bott*, 466. S. C. Debt upon bond conditioned to indemnify and save harmless the parish of *Eling* from a bastard child. *Plea;* that the defendant had maintained, supported, and nourished the said child to a certain day, that is to say, to the 27th of *October* last, and that then he offered to take the said child to maintain, which they refused, and that if the churchwardens or any of them have been damnified, it is of their own wrong. *Replication;* that for three weeks from and after the said 27th day of *October*, the defendant did not provide nourishment for the child, but failed, and by reason thereof the plaintiffs, after the three weeks, expended 3*s.* for the maintenance of the child, and so were damnified. *Demurrer;* and *joinder in demurrer.* The question of law is, whether a putative father may take a bastard child into his own custody to maintain it, or whether the parish shall have the care of it. And the case in 2 *Saund.* 83. was mentioned, wherein the court held this to be a good plea. 1 *Vent.* 48. that the father may maintain the child himself. 1 *Vent.* 210. that the justices can only make an order to maintain, so long as the child shall be chargeable. It was held by the Court, with the exception of *Foster* J. who doubted, that the putative father might take his child and maintain it himself, and that this has always been given as a reason why orders for the maintenance of such children must not be limited to any certain time.

And in *Hulland* v. *Malkin* and *Bristow*. In the *C. P.* 2 *Wils.* 126. 1 *Bott*, 488. (which was on an action on a bond for indemnifying the plaintiff from the charges of a bastard child, but it went off upon an error in the pleadings,) the Court said, we need not in this case say, whether the father or the mother hath a right to have the child while under seven years of age. And by the Ld. C. J. *Wilmot:* I give no opinion, whether the father has any power over the child, who is *nullius filius*. *Grotius* says, Truly the mother is the only certain parent. And an order of justices to remove the mother always removes the child.

Child obtained possession of by

But in *R.* v. *Soper*, 5 *T. R.* 278. A child of three years of age being brought up at the instance of its mother, on an *habeas*

fraud ordered to be restored to the mother.

corpus, by the putative father, on whom an order of filiation had been made, and who had obtained the possession of the child by fraud, Ld. *Kenyon* C. J. said, that the putative father had no right to the custody of the child; and it was accordingly restored to the mother.

Child within the age of nurture taken first by stratagem and again by force, ordered to be restored to the mother.

Rex v. *Hopkins* and *Wife*, 7 *East*, 579. 3 *Smith*, 577. S. C. Upon a motion on behalf of the mother of a bastard for a *habeas corpus* to the defendants, to bring it before the court, in order that her bastard child, which the defendants had taken from her by force, might be restored to her, it was said by Lord *Ellenborough* C. J. that as the mother had had the child in her quiet possession under her own care and protection during the period of nurture, and had been first divested of her possession by stratagem, and afterwards by force, in such a case every thing was to be presumed in her favour. And he said that without touching the question of guardianship, it was a proper occasion, by means of this writ, to restore the child to the same quiet custody in which it was before the transactions happened which were the subject of complaint. N. B. The circumstances of this case were very extraordinary.

It appears from the following case, that the mother is entitled to the custody of her illegitimate child in preference to the father, though he may be better able to educate it.

Ex parte Ann Knee, *C. P.* 1804. 1 *N. R.* 148. This was an application for an *habeas corpus* to bring up the body of an infant illegitimate child in order to restore it to the mother. It appeared by the affidavits, that the child had been placed by consent of the father and mother under the care of a nurse; that it was afterwards removed by the father to another woman; that the father then went abroad, having entrusted Mr. *Brandon*, a friend, with the superintendance of the child; that Mr. *Brandon* [to whom the writ was prayed to be directed] wished to have the child placed with some person where the mother could have access to the child, and under those circumstances was willing to pay for its maintenance, but the mother insisted upon having it delivered up to her. The child being brought up, and the mother being present,— *Shepherd* Serj. shewed cause, and urged that it would be for the benefit of the child that it should be placed with some person whom the father might approve, as the father, from his situation of life, was better able to maintain the child than the mother. *Best* Serj. *contrà*, insisted upon the right of the mother to the custody of her own child, and referred to the *King* v. *De Manneville*, 5 *East*, 221. and the *King* v. *Moseley*, 5 *East*, 224, (notis) and the *King* v. *Soper*, 4 *T. R.* 278.—Sir *James Mansfield* C. J. There is no affidavit before the court to shew any ground of apprehension that the child would incur any danger from being left with the mother. It is not unlikely indeed that by granting this application we may be doing a great prejudice to the child, but still the mother is entitled to the child if she insists upon it. The application in this case may have arisen from pure affection, and the mother may be disposed to take care of the child, but it is not probable that it will be so advantageously brought up under her care as under the care of some person whom the father approves of. It often happens that the mother insists upon the custody of the child, not so much out of regard to

the child itself, as with a view to make the father pay a sum of money towards its maintenance and education. Nevertheless the mother must have the child unless some ground be laid by affidavit to prevent it. Let the child be delivered to the mother. Accordingly, the other judges, *Heath*, *Rooke*, and *Chambre*, being of the same opinion, the child was delivered to the mother in court.

But in *Strangeways* v. *Robinson* and another, 4 *Taunt.* 498. which was an action of debt on bond conditioned for payment of a weekly sum for maintenance of a bastard child, so long as it should be chargeable, to which the defendants pleaded, that after the child attained the age of seven years the putative father offered thenceforth to keep and maintain the child, and requested the overseers to deliver the child to him, (without stating that the child was in their possession.) Sir J. *Mansfield* C. J. in delivering the judgment of the Court, concluded in the following words: "I say nothing upon the grand point, whether, after the child is out of the age of nurture, any father whatsoever, be he who he may, can go to the mother and claim the custody of the child; upon that point the court gives no opinion." Judgment for the plaintiff.

VI. Punishment of the Mother and reputed Father.

18 El. c. 3.

By stat. 18 *El. c.* 3. *Concerning bastards being now left to be kept at the charges of the parish where born, to the great burden thereof, and to the evil example and encouragement of lewd life, it is enacted that the two next justices shall take order therein, as well for the punishment of the mother and reputed father, as for the relief of the parish.*

50 G. 3. c. 51. Punishment.

By stat. 50 *G.* 3. *c.* 51. § 1. the stat. 7 *J. c.* 4. § 7. (for punishing lewd women who have bastards) is repealed, and by § 2. it is enacted, "That from and after the passing of this act, in cases when a woman shall have a bastard child which may be chargeable to the parish, it shall be lawful for any two justices of the peace before whom such woman shall be brought, and they shall or may, at their discretion, commit (C c) (D d) such woman to the house of correction for the district or place, and there to be set on work for any time not exceeding twelve calendar months nor less than six weeks."

C c. D d. Not exceeding twelve calendar months nor less than six weeks.

Justices may mitigate confinement and discharge.

And by § 3. "It shall be lawful for any two justices of the peace, at any petty session for the division wherein the parish to which such bastard child may be chargeable is situate, upon their own knowledge, or a certificate duly authenticated from the keeper of such house of correction in which such woman shall have been confined for any space not less than six weeks, of the good behaviour of such woman during such her confinement, and of the reasonable expectation of her reformation, by warrant under their hands and seals, to order such woman to be immediately (or at the time to be appointed in such warrant) discharged and released from further confinement."

No woman to be committed till she has been delivered one month.

§ 4. Provides "that nothing in this act contained shall extend, or be construed to extend to authorise any justices of the peace to commit any such woman to the house of correction, until she shall have been delivered for the space of one calendar month,"

Child must be chargeable.

Bastard child which may be chargeable.] If the mother will discharge the parish of keeping the bastard, it appears questionable whether she can be legally committed, either under stat. 18 *Eliz.* or stat. 50 *G.* 3. *c.* 51. Vide 4 *Bla. Com.* 65. and *R.* v. *Alveley* and *R.* v. *Tibbenham*, Vol. IV. tit. Poor, § XVII. 1. *a. b.*

Commitment by any two justices.

Lawful for any two justices.] The apparent restriction of 18 *Eliz.* to the *two next* justices is removed.

Whether the child may be committed with the mother.

To commit such woman.] It seemeth neither reasonable nor legal *to commit the child* with the mother. It ought to be left to her own option, particularly if the child suckleth, which is most frequently the case, to take it with her, or leave it. If left it must be supported by the parish in which it is legally settled, which is ordinarily that from which the mother is committed. *Dalt. c.* 11. p. 34. See *R.* v. *Hemlington*, Vol. IV. § v. 3. p. 281.

VII. Mother or reputed Father running away.

13 & 14 C. 2. c. 12. Their property may be seized and sold.

By stat. 13 & 14 *C.* 2. *c.* 12. § 19. "Whereas the putative fathers and lewd mothers of bastard children run away out of the parish, and sometimes out of the county, and leave the bastard children upon the charge of the parish where they are born, although such putative father and mother have estates sufficient to discharge such parish; it shall and may be lawful for the church-wardens and overseers of the poor of such parish where any bastard child shall be born, to take and seize so much of the goods and chattels, and receive so much of the annual rents or profits of the lands of such putative father or lewd mother, as shall be ordered (E e) by any two justices of peace for or towards the discharge of the parish, to be confirmed at the sessions, for the bringing up and providing for such bastard child; and thereupon it shall be lawful for the sessions to make an order for the church-wardens or overseers of the poor of such parish, to dispose of the goods by sale or otherwise, or so much of them for the purposes aforesaid, as the court shall think fit, and to receive the rents and profits, or so much of them as shall be so ordered by the sessions as aforesaid, of his or her lands."

E e.

Q. v. *Chaffey*, 2 *Ld. Raym.* 858. 3 *Salk.* 66. 1 *Bott*, 472. Order to the churchwardens and overseers to seize of the putative father's goods what *they should judge proper* for securing of the parish, quashed: for that it should be, what the *justices think proper*, and not what the churchwardens and overseers think proper.

See also, title Poor, Vol. IV. § xv. *Relief.*

VIII. Murdering a Bastard Child.

21 J. c. 27.

By stat. 21 *J. c.* 27. Concealment of the death of a bastard child was made an undeniable evidence of murder in the mother, except she could prove by one witness at least that it was born dead.

But this law, which was accounted to savour strongly of severity, and always construed most favourably for the unfortunate object of accusation, (4 *Bla. Com.* 198. 1 *Russ.* 618.) is repealed, together with an Irish act upon the same subject, by stat. 43 *G.* 3. *c.* 58. § 3. (called Lord *Ellenborough*'s act,) which enacts, "that the trials in *England* and *Ireland* respectively, of women charged

43 G. 3. c. 58. Women charged with murder

with the murder of any issue of their bodies, male or female, which being born alive, would by law be bastard, shall proceed and be governed by such and the like rules of evidence and of presumption, as are by law used and allowed to take place in respect to other trials for murder, and as if the said two several acts had never been made."

of their bastards to be proceeded against as in cases of other trials for murder,

§ 4. "Provided always, and be it enacted, that it shall and may be lawful for the jury by whose verdict any prisoner charged with such murder as aforesaid shall be acquitted, to find, in case it shall so appear in evidence that the prisoner was delivered of issue of her body, male or female, which, if born alive, would have been bastard, and that she did, by secret burying, or otherwise, endeavour to conceal the birth thereof, and thereupon it shall be lawful for the court before which such prisoner shall have been tried, to adjudge that such prisoner shall be committed to the common gaol or house of correction for any time not exceeding two years."

but if acquitted of the charge of murder, may, in cases of concealment of bastards, be imprisoned.

Stat. 43 *G.* 3. *c.* 58. § 3 & 4. Extends to all cases of concealment of the birth, whether the child be born alive or otherwise.

R. v. *Mary Southern, Stafford Sum. Ass.* 1809. *cor. Bayley* J. *MS.* The prisoner was indicted for the wilful murder of her female bastard child. It was proved that in the course of the night she was delivered of the child, which at four o'clock in the morning she took and threw into the privy. It also appeared that she had provided a cap and some trifling articles of childbed-linen. No marks of violence appeared on the body of the child; and the surgeon who examined the prisoner soon after her delivery, added, that from the state of the after-birth, and from the appearance of the child, he was of opinion that even if the child had been born alive, it could only have lived for a very short period. — *Petit,* for the prisoner, contended, that the statute of 43 *G.* 3. *c.* 58. did not apply to the case of a still-born bastard child; and argued from the construction which had been put upon the former stat. of 21 *James* 1. *c.* 27. [the defects of which it was the object of the stat. 43 *G.* 3. *c.* 58. to remedy, and within the provisions of which the present case would not fall,] that even if it did not sufficiently appear that the child was born dead, the circumstances of the prisoner having made provision for the birth, would take the case out of the statute. — But *Bayley* J. said, he should rule that the stat. 43 *G.* 3. *c.* 58. extended to all cases, whether it was proved that the child was still-born, or left the matter in doubt; and that he was of opinion in this case there was sufficient evidence to go to the jury of a concealment of the birth. His lordship added, that if the prisoner had avowed her pregnancy while she was in that state, or had to the knowledge of any other persons made preparation for her confinement, these circumstances would undoubtedly have been evidence to have satisfied a jury that the putting away the child was not for the purpose of concealing the birth, but that they would only have been matters of evidence, and would not have withdrawn the question of concealment from the consideration of the jury. The prisoner was found guilty of the concealment, and sentenced to be imprisoned two months in the house of correction.

Nearly similar points arose before the same learned judge at the *O. B. May Sess.* 1817, in the case of *Elizabeth Cornwall,* who

was convicted of concealing the birth of her bastard child. From the circumstances in evidence, in her case, the probability was, that the child was still-born, and that a female accomplice assisted in the delivery. Upon reference to the judges, (in consequence of a doubt expressed by the Recorder on these facts,) they unanimously held, 1st, That it was no answer to the charge of concealment that the child was still-born; and, 2dly, That the knowledge of the birth by an accomplice did not take the case out of the statute. *Rex* v. *Cornwall, O. B. May Sess.* 1817. *cor. Bayley* J. Present, *Garrow* B., and Sir *J. Silvester*, Bart. Recorder. *MS. C. C. R.*

If the grand jury throw out the bill for murder, the prisoner may be found guilty of the concealment, when tried for murder upon the coroner's inquest. *So decided by the judges, Mich. T.* 1812, *in Rex* v. *Maynard, reserved by* Ld. C. B. *Macdonald at Maidstone Sum. Ass.* 1812. *MS. C. C. R. Rex* v. *Cole,* 3 *Campb.* 371. 2 *Leach.* 1095. *S. P.*

Giving a potion to cause abortion.

If a woman be with child, and any give her a potion to destroy the child within her, and she take it, and it work so strongly that it kills her, this is murder; for it was not given to cure her of a disease, but unlawfully to destroy her child within her, and therefore he that gives her a potion to this end, must take the hazard, and if it kill the mother, it is murder. 1 *Hale*, 429, 430.

And if a woman, quick or great with child, took, or another gave her any potion to make an abortion, or if a man struck her, whereby the child within her was killed, though it were a great crime, yet it was not murder nor manslaughter by the law of *England*, because it was not yet *in rerum naturâ*, nor could it legally be known whether it were killed or not. 1 *Hale*, 433. Though if the child were born alive, and afterwards died of the poison or bruises it received in the womb, it was murder in such as administered or gave them. 1 *Haw. c.* 31. § 16. 4 *Bla. Com.* 198.

43 G. 3. c. 58. Administering poison to procure miscarriage of a woman *quick* with child, felony without clergy.

But this omission in our criminal code is in a great degree corrected by stat. 43 *G.* 3. *c.* 58. which after reciting that certain heinous offences, with intent to procure the miscarriage of women, had been of late frequently committed, and that no adequate means had been provided for their prevention and punishment, enacts, § 1. that if any person or persons shall, either in *England* or *Ireland*, " wilfully, maliciously, and unlawfully, administer to, or cause to be administered to, or taken by any of H. M's subjects any deadly poison or other noxious and destructive substance or thing, with intent thereby to cause and procure the miscarriage of any woman, then being quick with child;" the person or persons so offending, their counsellors, aiders, and abettors, knowing of and privy to such offence, shall be, and are hereby declared to be felons, and shall suffer death as in cases of felony without benefit of clergy.

The words "*quick with child*," are to be construed according to the common understanding in which they

Rex v. *Phillips, Monmouth Sum. Ass.* 1812. 3 *Campb.* 77. Upon an indictment on this section of the statute, the woman, in point of fact, was in the fourth month of her pregnancy; but she swore that she had not felt the child move within her before the taking the medicine, and that she was not then quick with child. The medical men, in their examinations, differed as to the time when the fœtus may be stated to be quick, and to have a

distinct existence; but they all agreed, that, in common understanding, a woman is not considered to be quick with child till she has felt the child alive and quick within her, which happens with different women in different stages of pregnancy, although most usually about the fifteenth or sixteenth week after conception. And *Lawrence* J. said, that this was the interpretation that must be put upon the words, "*quick with child*," in the statute; and, as the woman had not felt the child alive within her before taking the medicine, he directed the jury to acquit the prisoner.

signify that the woman has felt the child move within her.

Stat. 43 *G.* 3. *c.* 58. § 2. recites, that it might sometimes happen that poison or some other noxious and destructive substance or thing might be given, or other means used, with intent to procure miscarriage or abortion, where the woman might not be quick with child at the time, or it might not be proved that she was with child, and enacts, "That if any person or persons shall wilfully and maliciously administer to, or cause to be administered to, or taken by any woman, any medicines, drug, or other substance or thing whatsoever, or shall use or employ, or cause or procure to be used or employed any instrument or other means whatsoever, with intent thereby to cause or procure the miscarriage of any woman not being, or not being proved to be, quick with child at the time of administering such things or using such means, that then and in every such case the person or persons so offending, their counsellors, aiders, and abettors, knowing of and privy to such offence, shall be and are hereby declared to be guilty of felony, and shall be liable to be fined, imprisoned, set in and upon the pillory (*a*), publicly or privately whipped, or to suffer one or more of the said punishments, or to be transported beyond the seas for any term not exceeding fourteen years, at the discretion of the court before which such offender shall be tried and convicted."

43 G. 3. c. 58. Administering medicines to women *not* quick with child, to procure miscarriage, felony.

Rex v. *Phillips*, 3 *Campb.* 74, 75. An indictment upon this section of the statute charged the prisoner with having administered to a woman a *decoction* of a certain shrub called *savin*; and it appeared upon the evidence that the prisoner prepared the medicine, which he administered, by pouring boiling water on the leaves of a shrub. The medical men who were examined stated that such a preparation is called an infusion, and not a decoction, (which is made by boiling the substance in the water,) upon which the prisoner's counsel insisted that he was entitled to an acquittal, on the ground that the medicine was misdescribed. But *Lawrence* J. overruled the objection, and said that infusion and decoction are *ejusdem generis*, and that the variance was immaterial: that the question was, whether the prisoner administered any matter or thing to the woman to procure abortion.

An infusion or decoction of a shrub are *ejusdem generis*. The question upon § 2. is, whether any matter or thing was administered to procure abortion.

In the same case, witnesses having been called on behalf of the prisoner to prove that the shrub he used was not savin, the counsel for the prosecution insisted that he might, notwithstanding, be found guilty upon the last count of the indictment, which charged, that he administered a large quantity "of a certain mixture, to the jurors unknown, *then and there, being a noxious*

And it is not necessary, upon an indictment on § 2. charging the prisoner with having administered "a

(*a*) The punishment of the pillory is abolished by stat. 56 *G.* 3. *c.* 138. except in cases of perjury or subornation thereof.

certain mixture, to the jurors unknown, then and there, being a noxious and destructive thing," to prove that the mixture was noxious or destructive, or even that the woman was with child.

and destructive thing." The prisoner's counsel objected, that, unless the shrub was savin, there was no evidence that the mixture was "noxious and destructive."—*Lawrence* J. held, that in an indictment on this clause of the statute, it was improper to introduce these words; and that though they had been introduced, it was not necessary to prove them. And he further said, "it is immaterial whether the shrub was savin or not, or whether or nor it was capable of procuring abortion, or even whether the woman was actually with child. If the prisoner believed, at the time, that it would procure abortion, and administered it with that intent, the case is within the statute, and he is guilty of the offence laid to his charge."(*a*)

If a man procure a woman with child to destroy her infant when born, and the child is born, and the woman in pursuance of that procurement kill the infant; this is murder in the mother, and the procurer is accessary. 1 *Hale*, 433.

IX. Capacity of a Bastard as to Inheritance.

A bastard can have no name of reputation as soon as he is born, but after he is born, and hath gained by time a name of reputation, he may purchase by his reputed name, to him and to his heirs; though he can have no heirs but of his body. 1 *Inst.* 3. 6 *Rep.* 65.

A bastard is *terminus à quo;* he is the first of his family, for he hath no relation of which the law takes any notice; but this must be understood as to civil purposes; for there is a relation as to moral purposes, therefore he cannot marry his own mother, or sister, or the like. 3 *Salk.* 66. *Haines* v. *Jeffel.* 1 *Ld. Raym.* 66.

Consideration of natural affection will not raise an use to a bastard; for though there is natural affection between them, yet the raising the use is a constitution of the law, and therefore the issue will never arise. *Jenk.* 47. *Dyer*, 374.

If the issue of a man who is a bastard purchase land, and die without issue, though the land cannot descend to any heir on the part of the father, yet to the heir on the part of the mother (being no bastard) it may; so if the bastard were attaint; for the heirs of the mother make not any conveyance by the bastard. *Noy.* 159.

If a bastard die intestate, without wife or issue, the king is entitled to the *personalty;* and the ordinary of course grants administration to the patentee or grantee of the crown. 3 *P. Wm.* 33. 2 *Black. Com.* 505.

It is usual, however, for the crown to grant administration of it to some relation of the bastard's father or mother, reserving one-tenth or other small proportion of it. 1 *Wood*, 308.

But the rule, that a bastard is *nullius filius*, applies only to the case of inheritance; it was so considered by Lord *Coke*.

(*a*) The prisoner in his defence urged, that he had given the young woman an innocent draught for the purpose of amusing her, as she had threatened to destroy herself unless enabled to conceal her shame, and the jury returned a verdict of *Not Guilty*.

Bastards were held to be within the meaning of the marriage act. 26 *G*.2. *c*.33. § 11. before its repeal by stat. 3 *G*.4. *c*.75. § 1. See Vol. IV. p. 324. *Rex* v. *Inhab. of Hodnett,* 1 *T. R.*96.

A. Examination of a Woman who has been delivered of a Bastard; by stat. 6 *G*. 2. *c*. 31. *ante*, p. 306.

A.

County of ——— } *THE examination of* A. M. *of the parish of* ——— *in the said county, single woman, taken upon oath before me* ——— *one of his majesty's justices of the peace of the said county, this* ——— *day of* ———, 182—.

Who saith, that on or about the ——— *day of* ——— *now last past, she the said* A. M. *was delivered of a (male) bastard child in the said parish, and that the said bastard child is likely to become* [or, *is actually*] *chargeable to the said parish, and that* A. F. *of* ——— *in the said county, weaver, did get her with child of the said bastard child.*

Taken and signed the day and year first above written, before me,

J. P.

The mark of + A. M.

B. Warrant for apprehending the reputed Father, after the Birth. Stat. 6 *G*. 2. *c*. 31. *ante*, p. 306.

B.

County of ——— } To the constable of ——— and to all other peace officers in the said county.

WHEREAS A. M. *of the parish of* ——— *in the said county, single woman, hath, in her examination taken in writing, upon oath, before me* ——— *one of his majesty's justices of the peace, of the said county, this day deposed that on or about the* ——— *day of* ——— *now last past, she the said* A. M. *was delivered of a (male) bastard child in the said parish, and that the said bastard child is likely to become* [or, *is actually*] *chargeable to the said parish, and hath in the same examination charged* A. F. *of* ——— *in the county of* ——— *weaver, with having gotten her with child of the said bastard child; and whereas* O. P. *one of the overseers of the poor of the said parish, in order to indemnify the said parish in the premises, hath applied to me to issue my warrant for the apprehending of the said* A. F.; *I do therefore hereby command you immediately to apprehend the said* A. F. *and to bring him before me, or any other of his majesty's justices of the peace for the said county of* ——— *To the intent that he may be committed to the common gaol or house of correction of the same county, unless he shall give security to indemnify the said parish, or shall enter into a recognizance with sufficient surety, upon condition to appear at the next general quarter sessions of the peace to be holden for the said county of* ——— *and to abide and perform such order or orders as shall be made, in pursuance of an act passed in the eighteenth year of the reign of her late majesty queen* Elizabeth, *concerning bastards begotten and born out of lawful matrimony. Given under my hand and seal the* ——— *day of* ———, *&c.*

C.

C. Commitment thereupon; by stat. 6 G. 2. c. 31.

County of ——— { To the constable of ——— in the said county, and to the keeper of the house of correction, [*or*, common gaol] at ——— in the said county.

WHEREAS A. M. *of the parish of* ——— *in the said county, single woman, hath, in her examination taken in writing, upon oath, before me* ——— *one of his majesty's justices of the peace of the said county, on the* ——— *day of* ——— *deposed that on or about the* ——— *day of* ——— *now last past, she the said* A. M. *was delivered of a (male) bastard child, in the said parish, and that the said bastard child is likely to become* [or, *is actually*] *chargeable to the said parish, and hath in the same examination charged* A. F. *with having gotten her with child of the said bastard child. And whereas the said* A. F. *being now personally present before me, being brought pursuant to my warrant for that purpose granted upon the application of* O. P., *one of the overseers of the poor of the said parish, doth refuse to give security to indemnify the said parish, and doth also refuse to enter into a recognizance with sufficient surety, upon condition to appear at the next general quarter sessions* [or, *next general sessions*] *of the peace to be holden for the said county of* ——— *and to abide and perform such order or orders as shall be made in pursuance of an act passed in the eighteenth year of the reign of her late majesty queen* Elizabeth, *concerning bastards begotten and born out of lawful matrimony: pursuant to the statute in such case made and provided: These are therefore to command you the said constable to take and convey the said* A. F. *to the house of correction* (or *common gaol*) *at* ——— *in the said county of* Stafford, *and to deliver him to the keeper thereof, together with this warrant: And I do hereby command you the said keeper of the said house of correction* [or, *the said common gaol*] *to receive the said* A. F. *into your custody in the said house of correction* [or, *the said common gaol*] *and him there safely to keep until he shall give such security, or enter into such recognizance as aforesaid, or be otherwise lawfully delivered from thence. Given under my hand and seal the* ——— *day of* ———, *&c.*

D.

D. Bond to indemnify the Parish. See p. 306.

KNOW all men by these presents, that we A. F. *of* ——— *in the county of* ——— *gentleman, and* A. S. *of* ——— *yeoman, are held and firmly bound unto* ——— *churchwardens, and* ——— *overseers of the poor of the parish of* ——— *in the said county (in trust for the parishioners of the said parish) in* ——— *pounds of good and lawful money of* Great Britain, *to be paid to the said* ——— *or their certain attorney, their executors, administrators or assigns. To which payment well and truly to be made we bind ourselves, and each of us, jointly and severally, and our, and each and every of our, heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated the* ——— *day of* ———, *in the* ——— *year of the*

reign of our sovereign lord George *the Fourth, of the united kingdom of* Great Britain *and* Ireland, *king, defender of the faith, and in the year of our Lord* ———.

The condition *of this obligation is such, that whereas* A. M. *of* ——— *single woman, hath in and by her voluntary examination, taken in writing upon oath before* ——— *one of his majesty's justices of the peace in and for the said county of* ——— *declared that she is with child, and that the said child is likely to be born a bastard, and to be chargeable to the said parish of* ———, *and that the above-bounden* A. F. *did get her with child;* [If it s after the birth, then say, *that whereas* A. M. *of* ——— *single woman, in her examination taken in writing upon oath, before* ——— *one of his majesty's justices of the peace in and for the said county, hath declared, that on the* ——— *day of* ——— *now last past, at* ——— *in the parish of* ——— *in the county aforesaid, she the said* A. M. *was delivered of a (male) bastard child, and that the said bastard child is likely to become chargeable to the said parish of* ——— *and hath charged the above-bound* A. F. *with having gotten her with child of the said bastard child;*] *If therefore the said* A. F. *and* A. S. *or either of them, their or either of their heirs, executors or administrators, do and shall from time to time, and at all times hereafter, fully and clearly indemnify and save harmless, as well the above-named churchwardens and overseers of the poor of the said parish of* ——— *and their successors for the time being, as also all and singular the other parishioners and inhabitants of the said parish of* ——— *which now are or hereafter shall be for the time being, of and from all manner of costs, taxes, rates, assessments, and charges whatsoever, for or by reason of the birth, education, and maintenance of the said child, and of and from all actions, suits, troubles and other charges and demands whatsoever, touching or concerning the same, then this present obligation to be void, otherwise of force.*

A. F. (L. S)
A. S. (L. S.)

Signed, sealed, and delivered (having been first duly stamped) in the presence of

A. W.
B. W.

E. Recognizance of reputed Father after Birth, with a Condition to appear at the Sessions, and to abide such Order as shall be made; on stat. 6 *G.* 2. *c.* 31. *ante*, p. 306. E.

County of ——— } BE *it remembered, that on the* ——— *day of* ——— *in the* ——— *year of the reign of our sovereign lord* George *the Fourth, of the United Kingdom of* Great Britain *and* Ireland, *king, defender of the faith,* A. F. *of* ——— *in the county aforesaid, labourer, and* A. S. *of* ——— *in the county aforesaid, yeoman, personally came before me* J. P. *esquire, one of the justices of our said lord the king, assigned to keep the peace in the said county, and acknowledged themselves to owe to our said lord the king; that is to say, the said* A. F. *the sum of* ——— *and the said* A. S. *the sum of* ——— *of good and lawful money of* Great Britain, *to be made and levied of their goods and chattels, lands and tenements respectively to the*

use of our said lord the king, his heirs and successors, if the said A. F. *shall make default in the condition under written.*

Whereas A. M. *of the parish of* ——— *in the said county, single woman, in her examination taken in writing upon oath before me* ——— *one of his majesty's justices of the peace of the said county, on the* ——— *day of* ———, *hath deposed, that on or about the* ——— *day of* ——— *now last past, she the said* A. M. *was delivered of a (male) bastard child in the said parish, and that the said bastard child is likely to become* [or *is actually*] *chargeable to the said parish; and in the same examination hath charged the above-bounden* A. F. *with having gotten her with child of the said bastard child; The condition of this recognizance is such, that if the above-bounden* A. F. *do and shall appear at the next general quarter sessions* [or, *the next general sessions*] *of the peace to be holden for the said county, and shall abide and perform such order or orders as shall be made in pursuance of an act passed in the eighteenth year of the reign of her late majesty queen* Elizabeth, *concerning bastards begotten and born out of lawful matrimony,* —— *then this recognizance to be void, otherwise to be of force.*

Acknowledged before me, J. P.

F.

F. Form of an Application of the reputed Father for a Liberate. (Stat. 6 G. 2. *c.* 31. § 3. *ante,* p. 306.)

County of ——— } *BE it remembered, that on the* ——— *day of* ——— *in the year of our Lord one thousand eight hundred and* ———, A. F. [or, W. F. *for and in behalf of* A. F.] *now a prisoner in the house of correction* [or, *common gaol*] *at* ———, *in the said county of* ———, *made application and complaint before me* J. P. *esquire, one of his majesty's justices of the peace within the said county, and residing in* [or, *next unto*] *the limits where the parish church of* ——— *in the said county is situate, for that* A. M. *of the parish of* ——— *in the said county, single woman, in and by an examination in writing, taken upon oath before me* [or, as the case may be] *the* ——— *day of* ——— *now last past, deposed, that on or about the* ——— *day of* ——— *she the said* A. M. *was delivered of a* —— *male bastard child, in the said parish, and that the said bastard child was likely to become* [or, *actually*] *chargeable to the same parish, and that the said* A. F. *did get her with child of the said bastard child. Whereupon he the said* A. F. *having been brought before me* [or, as the case may be] *by virtue of my warrant for that purpose granted, and having refused to give security to indemnify the said parish, or to enter into a recognizance with sufficient surety, with a condition thereunto annexed in pursuance of the statutes* (a) *in that case made and provided, was by me,* [or as the case may be] *on the* ——— *day of* ——— *now last past committed to the said house of correction* [or, *common gaol*] *in pursuance of the said statutes.* (b) *And whereas the said* A. F. [or, *the said* W. F. *for and in behalf of the said* A. F.] *doth allege that he the said* A. F. *hath indemnified* [or, *that he hath given security to indemnify*] *the said parish against all costs and charges incident to the birth and*

(a) 6 G. 2. *c.* 31. § 1. *ante,* p. 305. 49 G. 3. *c.* 68. § 2. *ante,* p. 307.
(b) 49 G. 3. *c.* 68. § 2. *ante,* p. 307.

maintenance of the said bastard child, [or, *that it is more than six weeks since the said* A. M. *was delivered of the said bastard child, and that no order hath been made in pursuance of the act of the eighteenth year of her late majesty queen* Elizabeth *concerning bastards begotten and born out of lawful matrimony. And hereupon the said* A. F. [or, W. F. *for and in behalf of the said* A. F.] *prayeth that he may be forthwith liberated and discharged from and out of his imprisonment in the said house of correction* [or, *common gaol*] *as directed by the statute in such case made and provided.*

Made before me the day and year first above mentioned, A. F. or W. F.

J. P.

G. Summons of the Overseers by a Justice, to shew cause why the reputed Father should not be discharged out of Prison, where no Order hath been made within Six Weeks after the Birth of the Child, according to stat. 6 *G.* 2. *c.* 31. § 3. *ante*, p. 306. G.

County of —— } To the constable of —— in the said county.

WHEREAS application hath been made unto me J. P. *esquire, one of his majesty's justices of the peace in and for the said county, and residing in* [or, *next unto*] *the limits where the parish church of* —— *in the said county is situate, by* A. F. [or, W. F. *for and on behalf of* A. F.] *now a prisoner in the house of correction* [or, *common gaol*] *at* —— *in the said county, for that* A. M. *of the parish of* —— *in the said county, single woman, in and by an examination in writing taken upon oath before me,* [or, as the case may be] *the* —— *day of* —— *now last past, deposed, that on or about the* —— *day of* ——, *she the said* A. M. *was delivered of a* —— *male bastard child in the said parish, and that the said bastard child was likely to become* [or, *actually*] *chargeable to the same parish; and that the said* A. F. *did get her with child of the said bastard child. Whereupon, &c. &c.* [as in the last form, reciting it to the end]. *These are therefore to require you the said constable to summon the overseers of the poor of the said parish of* —— *to appear before me at* —— *in the said county, on the* —— *day of* —— *next, at the hour of* —— *in the* —— *noon of the same day, to shew cause why the said* A. F. *should not be discharged from his imprisonment in the said house of correction* [or, *common gaol*] *as directed by the act of parliament for that purpose; And be you then there to certify what you shall have done in the execution hereof. Herein fail you not. Given under my hand and seal the* —— *day of* ——.

J. P. (*L. S.*)

H.

H. Liberate thereupon.

County of ——— } *J. P.* esquire, one of the justices of our lord the king assigned to keep the peace in the said county, to the keeper of the house of correction [*or* common gaol] at ——— in the said county.

WHEREAS A. M. *of* ——— *in the said county, single woman, in and by her examination taken in writing upon oath, the* ——— *day of* ——— *now last past, before me the justice aforesaid, deposed, that on or about the* ——— *day of* ——— *she the said* A. M. *was delivered of a* —— *male bastard child* [reciting the filiation as in Form F.] *Whereupon the said* A. F. *having refused before me to give security to indemnify the said parish or to enter into a recognizance with sufficient surety, with a condition thereunto annexed, in pursuance of the statutes in that case made and provided; was by me, on the* ——— *day of* ——— *last, committed to the said house of correction* [or, *common gaol*] *in pursuance of the said statutes: And whereas the said* A. F. *hath applied to me to be discharged from his imprisonment: And whereas* O. P. *one of the overseers of the poor of the said parish, hath this day appeared before me, having been duly summoned for that purpose, but hath not shewn any cause why the said* A. F. *should not be discharged as the statute in that case directs;* [or, if no overseer appear, say, *And whereas it hath been duly proved upon the oath of* A. C. *constable of* ———, *that the overseers of the poor of the said parish of* ——— *were duly summoned to shew cause why the said* A. F. *should not be discharged from his imprisonment as the statute in that behalf directs, but that all of the said overseers have neglected to appear before me at the time and place appointed by my summons:*] *And it appearing unto me on the oath of* A. W. *of* ——— *that the said* A. F. *hath indemnified* [or, *that he hath given security to indemnify*] *the said parish against all costs and charges incident to the birth and maintenance of the said bastard child;* [or, *that it is now more than six weeks since the said* A. M. *was delivered of the said bastard child, and also that no order hath been made in pursuance of the act of the eighteenth year of her late majesty queen* Elizabeth *concerning bastards begotten and born out of lawful matrimony;*] (or, as stated in the application.) *These are therefore in his said majesty's name to authorise and require you the said keeper of the said house of correction, to forbear to detain the said* A. F. *any longer in your custody, and to release him from thence, and to suffer him to go at large, provided he be not detained in your custody for any other cause. Given under my hand and seal the* ——— *day of* ———.

J. P. (*L. S.*)

I.

I. Voluntary Examination of a Woman with Child of a Bastard; stat. 49 *G.* 3. *c.* 68. § 2. p. 307.

County of ——— } *THE voluntary examination of* A. M. *of the parish of* ——— *in the said county, single woman, taken upon oath before me* ——— *one of his majesty's justices of the peace of the said county, this* ——— *day of* ——— 182—.

Who declares that she is now with child, and that such child is likely to be born a bastard, and to be chargeable to the said parish,

and that A. F. *of* ——— *in the county of* ——— *hath gotten her with child, of the said child.*

Taken and signed the day and year above written, before me,
J. P.

The mark of
+ A. M.

K. Warrant for apprehending the reputed Father before the Birth; by stat. 49 *G.* 3. *c.* 68. § 2. p. 307.

K.

County of ——— } To the constable of ———.

WHEREAS A. M. *of the parish of* ——— *in the said county, single woman, hath, in her voluntary examination taken in writing upon oath, before me* ——— *one of his majesty's justices of the peace of the said county, this day declared herself to be with child, and that such child is likely to be born a bastard, and to be chargeable to the said parish; and hath in the same examination charged* A. F. *of* ——— *in the county of* ——— *with having gotten her with child of the said child: And whereas* O. P. *one of the overseers of the poor of the said parish, in order to indemnify the said parish in the premises, hath applied to me to issue my warrant for the apprehending of the said* A. F.; *I do therefore hereby command you immediately to apprehend the said* A. F., *and to bring him before me or any other of his majesty's justices of the peace for the said county of* ———, *to the intent that he may be committed to the common gaol or house of correction of the same county, unless he shall give security to indemnify the said parish, or shall enter into a recognizance with sufficient surety or sureties upon condition to appear at the next general quarter sessions* [or, *next general sessions*] *of the peace to be holden for the said county of* ———, *to abide and perform such order or orders as shall then be made, in pursuance of an act passed in the eighteenth year of the reign of her late majesty queen* Elizabeth, *concerning bastards begotten and born out of lawful matrimony, unless one such justice as aforesaid shall have certified in writing, under his hand, to such general quarter sessions* [or, *general sessions*] *of the peace, that it hath been proved before him, upon the oath of one credible witness, that the said* A. M. *had not been then delivered;* or, *that the said* A. M. *had been delivered, within one month only, previous to the day on which such general quarter sessions* [or, *general sessions*] *of the peace, shall be holden: or unless two justices of the peace of the said county of* ———, *shall have certified in writing, under their hands, to the next, or in case the said* A. M. *shall not have been delivered as aforesaid, then to the immediately subsequent, general quarter sessions* [or, *general sessions*] *of the peace, that an order of filiation had been already made on the said* A. F., or *that such order was not then requisite to be made on account of the death of the said bastard child,* [or for other like sufficient reason (a),] *pursuant to the statutes* (b) *in such case made and provided. Given under my hand and seal, the* ——— *day of* ———, *&c.*

(a) See stat. 49 G. 3. c. 68. § 2. p. 307. and (F.).
(b) Viz. 6 *G.* 2. *c.* 31. § 3. 49 *G.* 3. *c.* 68. § 2. pp. 305, 306, 307.

L.

L. Commitment thereupon.

County of } To the constable of · · in the said county, and to the keeper of the house of correction [*or* common gaol] at ——— in the said county.

WHEREAS A. M. *of the parish of* ——— *in the said county, single woman, hath in her voluntary examination taken in writing upon oath, before me* ——— *one of his majesty's justices of the peace of the said county, on the* ——— *day of* ——— *declared herself to be with child, and that such child is likely to be born a bastard, and to be chargeable to the said parish, and hath in the same examination charged* A. F. *of* ——— *in the county of* ——— *with having gotten her with child of the said child. And whereas the said* A. F. *being now personally present before me, being brought pursuant to my warrant for that purpose granted upon the application of* O. P. *one of the overseers of the poor of the said parish, doth refuse to give security to indemnify the said parish, and doth also refuse to enter into a recognizance with sufficient surety or sureties, upon condition to appear at the next general quarter sessions* (or, *next general sessions*) *of the peace to be holden for the said county, to abide and perform such order or orders as shall then be made in pursuance of an act passed in the eighteenth year of the reign of her late majesty queen* Elizabeth, *concerning bastards begotten and born out of lawful matrimony. Unless one justice, &c. &c.* [as in the latter part of the last Form.]

These are, therefore, to command you the said constable to take and convey the said A. F. *to the house of correction* (or *common gaol*) *at* ——— *in the said county of* ——— *and to deliver him to the keeper thereof, together with this warrant · And I do hereby command you the said keeper of the said house of correction* (or *the said common gaol*) *to receive the said* A. F. *into your custody in the said house of correction,* [or *the said common gaol,*] *and him there safely to keep until he shall give such security, or enter into such recognizance as aforesaid, or be otherwise lawfully delivered from thence. Given under my hand and seal the* ——— *day of* ——— *&c.*

M.

M. Recognizance of the reputed father before birth, with a condition to appear at the Sessions to abide such order as shall be made, &c.: on stat. 49 G. 3. c. 68. § 2. p. 307.

(For Form of *Recognizance, vid.* E.)

Condition.

WHEREAS A. M. *of the parish of* ——— *in the said county single woman, hath, in her voluntary examination taken in writing upon oath before me* ——— *one of his majesty's justices of the peace of the said county, on the* ——— *day of* ——— *declared herself to be with child, and that such child is likely to be born a bastard, and to be chargeable to the said parish, and hath in the same examination charged the above-bounden* A. F. *with having gotten her with child of the said child. The condition of this recognizance is such, that if the above-bounden* A. F. *do and shall*

appear at the next general quarter sessions [or *the next general sessions*] *of the peace to be holden for the said county of* ——— *to abide and perform such order or orders as shall be then made in pursuance of an act passed in the eighteenth year of the reign of her late majesty queen* Elizabeth, *concerning bastards begotten and born out of lawful matrimony,* unless *one such justice of the peace for the said county of* ——— *shall have certified in writing under his hand to such general quarter sessions* [or *general sessions*] *of the peace that it has been proved before him, on the oath of one credible witness, that the said* A. M. *had not been then delivered,* or *that the said* A. M. *has been delivered within one month only, previously to the day on which such general quarter sessions* [or *general sessions*] *of the peace shall be holden,* or unless *two justices of the peace for the said county of* ——— *shall have certified in writing under their hands to the next,* or *in case the said* A. M. *shall not have been delivered, then to the immediately subsequent, general quarter sessions* [or *general sessions*] *of the peace, that an order of filiation has already been made, or that such order was not then requisite to be made on account of the death of the said bastard child, or for other like sufficient reason, then this recognizance to be void, otherwise of force.*

Acknowledged before me, J. P.

N. Certificate of One Justice that the Woman hath not been delivered, or hath been delivered within One Month only before the Sessions, under stat. 49 *G.* 3. *c.* 68. § 2. p. 307.

N.

To His Majesty's justices of the peace, for the county of——— assembled at the general quarter sessions of the peace, to be holden at *A.* in and for the said county, on the ——— day of ——— 18—.

County of ——— to wit. } *WHEREAS* A. M. *of the parish of* ——— *in the said county, single woman, did by her voluntary examination, taken in writing upon oath, before* J. P. *one of his majesty's justices of the peace for the said county, on the* ——— *day of* ——— *last past, declare herself to be then with child; and that the said child was likely to be born a bastard, and to be chargeable to the said parish of* ——— *and the said* A. M. *did in the same examination charge* A. F. *of* ——— *with having gotten her with child of the said child: And whereas afterwards* (*to wit*) *on the* ——— *day of* ——— *the said* A. F. *was brought before the said* J. P. [or, *before* ——— *one of his majesty's justices of the peace for the said county of* ———] *pursuant to a warrant for that purpose duly granted, and thereupon entered into a recognizance before him the said* ——— *in the sum of* ——— *with two sureties to wit,* ——— *of* ——— *and* ——— *of* ——— *in the sum of* ——— *each, upon condition to appear at the then next general quarter sessions of the peace to be holden for the said county, to abide and perform such order or orders as should then be made in pursuance of an act passed in the eighteenth year of her late majesty queen* Elizabeth, *concerning bastards begotten and born out of lawful matrimony: unless one such justice as aforesaid should have certified in writing under his hand to such general quarter*

sessions of the peace that, &c. [pursuing the words of the act down to the word "*holden.*"]

Now I ——— *one of his majesty's justices of the peace, acting in and for the said county of* ——— *do hereby certify that it hath been this day proved before me, upon the oath of* ——— (a) (*being a credible witness*) *that she the said* A. M. *hath not yet been delivered of the said bastard child:* [or, *that she the said* A. M. *hath been delivered of a* ——— *bastard child, within one month only previous to the day on which the said general quarter sessions of the peace will be holden, to wit, on the* ——— *day of* ——— *last or instant.*] *To the end that the recognizance entered into as aforesaid may be respited to the next general quarter sessions, pursuant to the statute in that case made and provided.*

Given under my hand the ——— *day of* ——— *in the year of our Lord* ———

Or, instead of the last, an affidavit and certificate in the following form may be returned to the sessions.

O.

O. Affidavit in order to get a Bastardy Recognizance respited under stat. 49 *G.* 3. *c.* 68. § 2. *ante*, p. 307. with the Justice's certificate thereon. (Vid. last Form.)

County of ——— } A. B. *of* ——— *in the county of* ———, ——— *maketh oath that he* [or, *she*] *is acquainted with* A. M. *of the parish of* E. *in the said county, single woman, who, as this deponent is given to understand, hath lately sworn before one of his majesty's justices of the peace for the said county that she the said* A. M. *is with child, that the said child is likely to be born a bastard, and to be chargeable to the said parish of* E., *and that* E. F. *of* ——— *in the county of* ——— *hath gotten her with child; and this deponent further maketh oath that the aforesaid* A. M. (*as this deponent verily believes*) *hath not yet been delivered of the said child,* [or, *hath been delivered of the said child within one month previous to the day on which the next general quarter sessions of the peace will be holden for the said county of* ——— *to wit on the* ——— *day* ——— *last* [or, *instant*].

Sworn before me, one of his majesty's justices of the peace for the said county of ——— *this* ——— *day of* ———.

To his majesty's justices of the peace for the county of ——— assembled at the general quarter sessions [*or*, general sessions] of the peace to be holden in and for the said county, on the ——— day of ——— 18—.

Pursuant to the statute in that case made and provided, and in consequence of the above information this day made on oath before me J. P. *esquire, one of his majesty's justices of the peace in and for the said county, I do hereby certify the same unto you, to the end that the recognizance entered into with sureties by the above mentioned putative father may be respited to the next* ——— *quarter sessions* [or, *general sessions*] *to be holden for the said county. Given under my hand at* ——— *in the said county of* ——— *this* ——— *day of* ——— A. D. 182—.

J. P.

(a) See next Form.

P. Certificate of Two Justices that an order of filiation has been made, or that such order is not requisite; on stat. 49 *G.* 3. *c.* 68. § 2. p. 308. P.

To His Majesty's justices of the peace for the county of ——— in quarter sessions assembled, on the ——— day of

WHEREAS A. M. *of* E. *in the said county of* ———, *single woman, did lately make oath before one of his majesty's justices of the peace for the county aforesaid, that she was with child, and that the said child was likely to be born a bastard, and to be chargeable to the parish of* E. *in the said county, and that* A. F. *of* H. *in the county of* ——— *yeoman, did get her with child of the said child: and whereas the said* A. F. *was afterwards bound in a recognizance with sureties before one of his majesty's justices of the peace for the said county of* ———, *to appear at the next general quarter sessions for the said county of* ———, *to abide and perform such order or orders as should then be made in pursuance of an act passed in the eighteenth year of the reign of queen* Elizabeth; *And whereas we* J. P. *and* K. P. *esquires, two of his majesty's justices of the peace for the said county of* ——— *have this day made an order of filiation on the aforesaid* A. F. *for the maintenance of the said child since born a bastard of the body of the said* A. M. *in the said parish of* E. [or, *and whereas it has this day been made appear to us* J. P. *and* K. P., *esquires, two of his majesty's justices of the peace for the said county of* ——— *that no order of filiation is now requisite to be made on account of the death of the said child since born a bastard of the body of the said* A. M. *in the said parish of* ——— [any other like sufficient reason for not making the order may be stated.] *We do therefore, pursuant to the statute in that case made and provided, hereby certify the same unto you, in order that the said recognizance may be wholly discharged. Given under our hands this* ——— *day of* ——— *in the year of our lord* 182—.

J. P.
K. P.

Q. Warrant of the two next Justices for the Mother, with a Summons for the reputed Father, to make the Order of Filiation and Maintenance; on stat. 18 *El.* *c.* 3. *ante*, p. 314. Q.

County of ——— } To the constable of ———, in the said county.

WHEREAS information hath been made unto us ——— *two of his majesty's justices of the peace in and for the said county, one whereof is of the quorum, and both of us residing in* [or, *next unto*] *the limits where the parish church is situate, of the parish of* ——— *in the said county, as well upon the complaint of the churchwardens and overseers of the poor of the said parish, as on the oath of* A. M. *of* ——— *single woman, that on the* ——— *day of* ——— *last past, she the said* A. M. *was delivered of a* [*male*] *bastard child in the said parish, and that* A. F. *of* ——— *in the said county, did get her with child of the said bastard child, and that the said bastard child is now living, and*

chargeable [or *likely to become chargeable*] *to the said parish: These are therefore to command you to bring the said* A. M. *before us, at the house of* ——— *in* ——— *in the said county, on the* ——— *day of* ——— *at the hour of* ——— *in the* ——*noon of the same day, to be by us further examined touching the premises; and also to give notice thereof unto the said* A. F. *that he may likewise attend at the time and place aforesaid, to make his lawful defence: To the end that, upon the examination of the case and circumstances, we may take such order therein as to right doth appertain. And what you shall do in the execution hereof, you are to make known unto us at the time and place last aforesaid. Given under our hands and seals the* ——— *day of*, &c.

R. R. Form of Order of Filiation and Maintenance pursuant to stats. 18 *Eliz. c.* 3. 49 *G.* 3. *c.* 68. p. 314. See *ante*, p. 320.

S. S. Overseer's Affidavit of Expenses, from Y. C. P. 69. *et seq.* (*a*)

[Stat. 49 G. 3. c. 68. § 1.— See *ante*, p. 315.]

County of ——— } *AN account of the charges and expenses incident to the birth of* A. M.*'s male bastard child, lately born in the parish of* ——— *in the county of* ———, *together with the costs of apprehending and securing the reputed father, the making of the order of filiation for indemnifying the said parish, and such other expenditure of the overseers of the poor of the parish aforesaid, as has been by them incurred regarding the same, in pursuance of the statutes respecting* bastards, *and ascertained upon the oath of the undersigned overseer of the poor of the said parish, before us, whose names are hereunto set, being two of his majesty's justices of the peace in and for the said county, this* ——— *day of* ——— *in the year of our Lord one thousand eight hundred and* ———.

	£.	s.	d.
(No. 1.) *Charges and expenses incident to the birth,* -			
(No. 2.) *Costs of apprehending and securing the reputed father, and of the order of filiation,* - -			
Examination, on oath, of the mother, - -			
Warrant thereon to apprehend the putative father, -			
Expenses of the overseer in conveying the mother to the magistrate, and attending on him accordingly, - - - - -			

(*a*) These precedents, if kept in blank by justices' clerks, will be found very convenient in practice; they facilitate the filling up of orders of filiation, since the sum marked (No. 1.) is what is to be placed in the first part of the order; and what is marked (No. 2.) is for the second part. The affidavit must be conformable to the order, which see, *ante*, p. 319.

£. s. d.

Constable's expenses on apprehending the putative father, - - - - -
Commitment of the putative father for want of sureties, - - - - -
Expenses of conveying the putative father to the house of correction, - - - -
Summons of the putative father to shew cause why an order of filiation should not be made on him, -
Information and warrant thereon after the birth of the child, to bring the mother for examination before two justices, - - - -
Expenses of the overseer in attending the magistrates to obtain the warrant for the mother, and summons for the putative father to shew cause why an order of filiation and maintenance should not be made on him, &c. - - -
Summons for the mother after the birth of the child, to be examined before two justices, (no warrant to bring her having issued,) - - -
Examination on oath of the mother, after the birth of the child, before two magistrates, - -
Constable's expenses in serving and returning the summons or warrant, &c. to the two justices, -
Affidavit taken in writing of these particulars, directed by stat. 49 *G.* 3. *c.* 68. § 1. to be duly ascertained upon oath, before the justices of the peace making the said order of filiation, - - -

(No. 3.)
Maintenance of the child from the time of its birth to the present day, viz. ——— *weeks, at* ——— *per week,* - - - - -

Total,

Sworn before us, the day and year above-mentioned,
J. P.
K. P.

O. P. { Overseer of the Poor.

T. The usual Form of an original Order of Bastardy made by the Court of Quarter Sessions pursuant to stat. 3 *C.* 1. *c.* 4. § 15. T.

County of ——— } *AT* ——— *&c.* [The true style of the sessions, which varies in every county, to precede the order]

UPON application and complaint to this Court by the churchwardens and overseers of the poor of the parish of ———, *in this county, concerning a female bastard child begotten on the body of* E. W., *single woman, and born in and chargeable to the said parish of* ——— *and upon examination of the cause and circumstances of the premises, as well upon the oath of the said* E. W. *as otherwise; it is adjudged by the Court that* I. H. *of* ———, *in the said county,*

yeoman, is the reputed father of a female bastard child born in and chargeable to the said parish of —— *on the body of the said* E. W.: *Therefore it is ordered by the Court that the said* I. H. *do forthwith pay unto the said churchwardens and overseers of the poor of the said parish of* —— *the sum of* —— *as and for the charges and expenses incident to the birth of the said bastard child, and the sum of* —— *as and for the costs of apprehending and securing the said* I. H. *and of the order of filiation; and also the sum of* —— *for the maintenance of the said bastard child to the time of making this order, all which said charges, expenses, costs, and maintenance, have been duly and respectively ascertained, as well on the oath of* H. O., *one of the said overseers of the poor as otherwise, before the said Court, and are by the said Court allowed; and it is further ordered by the said Court, that the said* I. H. *shall pay or cause to be paid to the churchwardens and overseers of the poor of the said parish for the time being, or to some or one of them, the sum of* —— *weekly and every week from the making of this order for and towards the keeping, sustentation and maintenance of the said bastard child for and during so long time as the said bastard child shall be chargeable to the said parish of* ——. *And that the said* E. W. *shall likewise pay unto the churchwardens and overseers of the poor of the said parish of* —— *for the time being, the sum of* —— *weekly, and every week from the making of this order, for and towards the keeping, sustentation, and maintenance of the said bastard child, so long as the said bastard child shall continue chargeable to the said parish of* ——, *in case she the said* E. W. *shall not herself nurse and take care of the said child.*

By the Court,

W. K.

U. U. Recognizance on Appeal against an Order of Bastardy. [Stat. 49 *G.* 3. *c.* 68. § 5. p. 328.]

County of } ——— } *BE it remembered, that on the* —— *day of* —— *in the* —— *year of the reign of our sovereign lord* George *the Fourth, of the United Kingdom of* Great Britain *and* Ireland, *king, defender of the faith,* A. F. *of* —— *in the said county, yeoman, and* B. F., *of* —— *in the county aforesaid,* —— *personally came before me* J. P., *esquire, one of his majesty's justices of the peace in and for the said county, and acknowledged themselves to owe to our said lord the king, the sum of* —— *pounds each, to be made and levied of their goods and chattels, lands and tenements respectively, to the use of our said lord the king, his heirs and successors, if default shall be made in the condition following:*

WHEREAS by an order under the hands and seals of J. P. *and* K. P., *esquires, two of his majesty's justices of the peace for the said county of* ——, *one whereof is of the quorum, and both of them residing in* [or, *next unto*] *the limits where the parish church is situate, of the parish of* E. *in the said county of* ——, A. F., *of* —— *in the said county, yeoman, is adjudged to be the reputed father of a male* [or *female*] *bastard child lately born of the body of* A. M., *of* E. *aforesaid, single woman, in the said parish of* E. [and then set forth what was therein ordered, adopting the very words of the



order.] *And whereas the said* A. F. *hath within three days preceding the date of this recognizance, and ten clear days before the next general quarter sessions of the peace to be holden for the said county, given notice to the said two justices, or to one of them, and also to the churchwardens and overseers of the poor of the said parish of* E., *or to one of them, of his intention of appealing against the said order, and of the cause and matter thereof: The condition of this recognizance is such, that if the above bound* A. F. *shall personally appear at the next general quarter sessions of the peace to be holden at the ——— in and for the said county, and shall then and there try such appeal, and abide the judgment and order of the justices at such quarter sessions assembled, and shall pay such costs as shall be by them awarded, then this recognizance to be void.*

Taken and acknowledged before me,

J. P.

V. Information for enforcing payment of expences incident to the Birth of a Bastard Child and Costs of securing the reputed Father, and of the Order of Filiation. (stat. 49 *G.* 3. *c.* 68. § 1. 4. *ante*, p. 317. and 18 *Eliz. c.* 3.)

V.

County of ———. } *THE information and complaint of* A. O. *one of the overseers of the poor of the parish of* W. *in the said county taken before me* J. P. *one of his majesty's justices of the peace for the said county, the ——— day of ——— in the year of our Lord* 182—.

Who on his oath saith that by an order made the ——— day of ——— A. D. 18— *under the hands and seals of* A. P. *and* K. P. *two of his majesty's justices of the peace in and for the said county one whereof is of the quorum and both residing in* [or, *next unto*] *the limits where the parish church is situate, of the parish of* W. *in the said county* A. F. *of ——— in the county of ——— was adjudged to be the reputed father of a male* [or, *female*] *bastard child then lately born in the said parish, of the body of* A. M. *single woman,* [or, as the case may be,] *and that in and by the said order, it was (amongst other things) ordered, that the said* A. F. *should forthwith upon notice thereof pay or cause to be paid to the churchwardens and overseers of the poor of the said parish for the present year* [or, *the year last past,* or as the case may be,] *or to some or one of them the sum of ——— as and for the reasonable charges and expences incident to the birth of the said bastard child, and also the sum of ——— as and for the reasonable costs of apprehending and securing the said* A. F. *and of the order of filiation; and also the further sum of ——— for the maintenance of the said bastard child, to the time of making the said order; all which said charges, expences, costs, and maintenance had been duly and respectively ascertained on oath before the said justices, and were by the same justices allowed: And this informant further saith that he the said* A. F. *hath had due notice of the said order, a true copy thereof having been personally delivered to him the said* A. F. *on the ——— day of ——— by the said ——— and that the said* A. F. *hath made default in not performing the said order, against which no appeal hath been made, and that the sum of ——— is now due and owing under and by virtue of the said order from him the said* A. F. *to the churchwardens and overseers of the poor of the said parish on the*

account aforesaid. And that payment of the said sum of ——— hath been demanded of him the said A. F. *but that he the said* A. F. *hath neglected and refused to pay the same. And this informant prayeth justice in the premises.*

Sworn before } A. O.

W.

W. Warrant to apprehend the reputed Father for disobeying an order of Filiation, by non-payment of *expences incident to the Birth and Costs,* on stat. 49 *G.* 3. *c.* 68. § 1. 4. ante, p. 317. and 18 *Eliz. c.* 3.

County of } To the constable of and all others his majesty's officers of the peace for the said county.

WHEREAS information and complaint upon oath have been this day made before me (a) J. P., *esquire, one of his majesty's justices of the peace for the said county by* A. O. *one of the overseers of the poor of the parish of ——— in the said county, that by an order, &c.* [reciting the information V.] *These are therefore to command and require you forthwith to apprehend and bring the said* A. F. *before any two or more of his majesty's justices of the peace for the said county of ——— to the intent that he may be committed to ward to the common gaol of the same county, there to remain without bail or mainprize except he shall put in sufficient surety to perform the said order or else personally to appear at the next general sessions of the peace to be holden in and for the said county of ——— and also to abide such order as the justices of the peace, or the more part of them then and there shall take in that behalf (if they then and there shall take any), and if at the said sessions the said justices shall take no other order, then to abide and perform the order already made as aforesaid.*

Given under my hand and seal the ——— day of ——— one thousand eight hundred and ———.

J. P. (*L. S.*)

X. Commitment thereupon by two Justices.

County of } To the constable of in the said county, and to the keeper of the common gaol at in the said county.

WHEREAS by an order, &c. [Recite the order as in the information V.] *And whereas it appears unto us* J. P. *and* T. P., *esquires, two of his majesty's justices of the peace for the said county of ——— on the oath of* A. O. *one of the overseers of the poor of the said parish, that the said* A. F. *hath had due notice of the said order, a true copy thereof having been personally delivered to him the said* A. F. *on the ——— day of ——— by the said ——— and that the said* A. F. *hath made default in not performing the said*

(*a*) By stat. 3 *G.* 4. *c.* 23. § 2. the complaint may now be made before *one* justices, a and warrant issued by him to bring the party before *two or more* justices, &c. See *post* tit. Conviction.

order, against which no appeal hath been made. And that the sum of ——— is now due and owing under and by virtue of the said order from the said A. F. *to the churchwardens and overseers of the poor of the said parish, on the account aforesaid, and that payment of the said sum of ——— hath been duly demanded of him the said* A. F. *but that he the said* A. F. *hath neglected and refused to pay the same. And whereas the said* A. F. *being now present before us, the said last named justices, to answer unto the complaint of the said* A. O. *touching such neglect and refusal, and to be further dealt with according to law, hath been required by us to put in sufficient surety to perform the said order or else personally to appear at the next general sessions of the peace to be holden in and for the said county and also to abide such order as the justices of the peace, or the more part of them, then and there shall take in that behalf, if they then and there shall take any) and if at the said sessions the said justices shall take no other order, then to abide and perform the order already made as aforesaid, but he the said* A. F. *hath refused to put in such surety. These are therefore to charge and command you the said constable forthwith to take and convey the said* A. F. *to the common gaol at ——— in the said county of ——— and there to deliver him to the keeper thereof, together with this warrant. And we do hereby also command you the said keeper to receive the said* A. F. *into your custody in the said common gaol, and him there safely to keep, without bail or mainprize, except he shall put in such surety as aforesaid. Given under our hands and seals the ——— day of ——— 182—.*

J. P. (*L. S.*)

This form of commitment is used before the first sessions after the party has had notice of the order, and made default in not performing it.

Y. Information for obtaining Payment of the weekly Sum ordered for Maintenance, on stat. 49 G. 3. *c.* 68. § 3. *ante*, p. 316. Y.

County of ——— } *THE information and complaint of* A. O. *one of the overseers of the poor of the parish of* W. *in the said county, taken before me* J. P. *one of his majesty's justices of the peace for the said county, the ——— day of ——— in the year of our Lord* 182—.

Who on his oath saith, that by an order made the ——— day of ——— A. D. 18— *under the hands and seals of* A. P. *and* K. P. *two of his majesty's justices of the peace in and for the said county,* (*one whereof is of the quorum,*) *and both residing in* [or, *next unto*] *the limits where the parish church is situate, of the parish of* W. *in the said county,* [or, *by an order made by the court of quarter sessions, held in and for the said county, on the ——— day of ———.*] A. F. *of ——— in the county of ——— was adjudged to be the reputed father of a male* [or, *female*] *bastard child then lately born in the said parish, of the body of* A. M. *single woman* [or as the case may be,] *and that in and by the said order it was amongst other things ordered, that he the said* A. F. *should pay or cause to be paid to the churchwardens and overseers of the poor of the said parish for the time being, or to some or one of them, the sum of ———,*

weekly and every week from the date of such order, for and towards the keeping, sustenance, and maintenance of such bastard child for and during so long a time as the said bastard child should be chargeable to the said parish: And this informant further saith, that he the said A. F. *hath had due notice of the said order, against which no appeal hath been made,* [or, *which said order was upon appeal confirmed by the court of quarter sessions holden in and for the said county of* ——— *on the* ——— *day of* ——— *last,*] *and that the said bastard child is now living, and the said parish is liable to the maintenance of the said bastard child, and that default hath been made in the payment of the said weekly sum of money mentioned in the said order, whereby there is now due and owing from him the said* A. F. *to the churchwardens and overseers of the poor of the said parish under and by virtue of the said order on the account aforesaid, the sum of* ———, *and that he the said* A. F. *hath neglected to pay the same, and this informant prayeth justice in the premises.*

Sworn before me, J. P. } A. O.

Z. Summons thereon.

County of } To the constable of ——— in the said county, and to all other his majesty's officers of the peace for the same county.

WHEREAS information and complaint, upon oath, have this day been made before me J. P. *one of his majesty's justices of the peace for the said county, by* A. O. *one of the overseers of the poor of the parish of* W. *in the said county, that by an order made the* ——— *day of* ——— *one thousand eight hundred and* ——— *under the hands and seals of* A. P. *and* K. P. *two of his majesty's justices of the peace in and for the said county, one whereof is of the quorum, and both residing in* [or, *next unto*] *the limits where the parish church is situate, of the said parish of* W. A. F. *of* ——— *in the county of* ——— *was adjudged to be the reputed father of a male* [or, *female*] *bastard child then lately born in the said parish, of the body of* A. S. *single woman,* [or as the case may be] *and that in and by the said order it was amongst other things ordered, that the said* A. T. *should pay or cause to be paid to the churchwardens and overseers of the poor of the said parish for the time being, or to some or one of them, the sum of* ——— *weekly and every week, from the date of such order, for and towards the keeping, sustenance, and maintenance of such bastard child, for and during so long time as the said bastard child should be chargeable to the said parish. And further, that the said* A. T. *hath had due notice of the said order, against which no appeal hath been made,* [or, *which said order was upon appeal confirmed by the court of quarter sessions holden in and for the said county of* ——— *on the* ——— *day of* ——— *last;*] *And that the said bastard child is now living, and the said parish is liable to the maintenance of the said bastard child: And that default hath been made in the payment of the said weekly sum of money mentioned in the said order, whereby there is now due and owing from him the said* A. T. *to the churchwardens and overseers of the poor of the said parish under and by virtue of the said order on the account aforesaid, the sum of* ———, *and that*

he the said A. T. *hath neglected to pay the same. These are therefore to command you forthwith, upon sight hereof, to summon the said* A. T. *to appear before me, or such other or others of his majesty's justices of the peace in and for the said county of* ——— *as shall be at* ——— *in the same county, on* ——— *the* ——— *day of* ——— *at the hour of* —— *in the forenoon of the same day, to answer to the said complaint, and to be further dealt with as the law directs; and be you then and there present to shew what you shall have done in the execution hereof. Given under my hand and seal the* ——— *day of* ——— 182—.

J. P. (*L. S.*)

A a. (*a*) Warrant to apprehend the reputed Father for disobeying an order of Filiation, by non-payment of *Maintenance Money*, on stat. 49 G. 3. *c.* 68. § 3.) *ante*, p. 316.

A a.

County of ——— } To the constable of ——— and all others his majesty's officers of the peace for the said county of ———

WHEREAS information and complaint upon oath have been made before me J. P. *esquire, one of his majesty's justices of the peace for the said county by* A. O. *one of the overseers of the poor of the parish of* ——— *in the said county, that by an order made the* ——— *day of* ——— *under the hands and seals of* J. K. *and* K. P. *esquires, two of his majesty's justices of the peace in and for the said county, (one whereof is of the quorum) and both residing in* [or, *next unto*] *the limits where the parish church is situate, of the said parish of* ——— A. F. *of* ——— *in the county of* ——— *labourer, was adjudged to be the reputed father of a male* [or *female*] *bastard child then lately born in the said parish, of the body of* A. M. *single woman, and that in and by the said order, it was amongst other things ordered that he the said* A. F. *should pay or cause to be paid to the churchwardens and overseers of the poor of the said parish for the time being, or to some or one of them the sum of* ——— *weekly and every week, from the date of the said order, for and towards the keeping, sustentation, and maintenance of the said bastard child, for and during so long a time, as the said bastard child should be chargeable to the said parish, And further that he the said* A. F. *hath had due notice of the said order against which no appeal hath been made,* [or, *which said order was upon appeal confirmed by the court of quarter sessions holden in and for the said county of* ——— *on the* ——— *day of* ———] *and that the said bastard child is now living and the said parish is liable to the maintenance of the said bastard child, and that default hath been made in the payment of the said weekly sum of money mentioned in the said order, whereby there is now due and owing from him the said* A. F. *to the churchwardens and overseers of the poor of the said parish under and by virtue of the said order on the account aforesaid, the sum of* ——— *and that payment of the said sum of* ——— *hath been demanded of him the said* A. F. *but that he the said* A. F. *hath neglected and refused to pay the same. And whereas*

(*a*) See the Form of Order, *ante*, p. 320.

the said A. F. *hath been duly summoned to answer to the said information and complaint but hath not appeared in pursuance of such summons. These are therefore to command and require you forthwith to apprehend and bring the said* A. F. *before me or some other of his majesty's justices of the peace for the said county to answer to the said information and complaint and to be further dealt with according to law. Given under my hand and seal the* ——— *day of* ——— *one thousand eight hundred and* ——.

(*L. S.*)

B b.

B b. Commitment thereupon.

County of } To the constable of ——— in the said county, and to the keeper of the house of correction [or common gaol] at ——— in the said county.
———— }

WHEREAS by an order made the ——— *day of* ——— *under the hands and seals of* J. K. *and* K. P., *esquires, two of his majesty's justices of the peace for the said county (one whereof is of the quorum) and both residing in* [or, *next unto*] *the limits where the parish church is situate, of the said parish of* ——— *in the said county,* A. F. *of* ——— *in the county of* ——— *labourer, was adjudged to be the reputed father of a male* [or, *female*] *bastard child then lately born in the said parish, of the body of* A. M. *singlewoman: And it was in and by such order, (amongst other things) ordered that he the said* A. F. *should, upon due notice thereof, pay or cause to be paid to the churchwardens and overseers of the poor of the said parish of* ——— *for the time being, or to some or one of them, the sum of* ——— *weekly and every week, from the date of such order, for and towards the keeping, sustentation, and maintenance of the said bastard child for and during so long a time as the said bastard child should be chargeable to the said parish. And whereas it appears unto me* J. P., *esquire, one of his majesty's justices of the peace for the said county, on the oath of* A. O. *one of the overseers of the poor of the said parish of* ——— *that the said* A. F. *hath had due notice of the said order, a true copy thereof having been personally delivered to him the said* A. F. *on the* ——— *day of* ——— *by the said* ———, *against which no appeal hath been made,* [or, *which said order was upon appeal confirmed by the court of quarter sessions, holden in and for the said county of* ——— *on the* ——— *day of* ———] *and that the said bastard child is now living and the said parish is liable to the maintenance of the said bastard child, and that default hath been made in the payment of the said weekly sum of money mentioned in the said order, whereby there is now due and owing from him the said* A. F. *to the churchwardens and overseers of the poor of the said parish under and by virtue of the said order on the account aforesaid the sum of* ——— *and that payment of the said sum of* ——— *hath been demanded of him the said* A. F. *but that he the said* A. F. *hath neglected and refused to pay the same. And whereas the said* A. F. *being now present before me the said last named justice to answer unto the complaint of the said* A. O. *for such neglect and refusal, and to be further dealt with according to law; and it appearing unto me the said justice, as well on the oath of the said* A. O. *as otherwise, that the said sum of* ——— *is now due and owing from the said*

A. F. to the churchwardens and overseers of the poor of the said parish of ——— under and by virtue of the said order, on the account aforesaid, and the said A. F. being called upon by me the said justice to pay the same, doth now refuse to pay the said sum, and hath not shewn to me any sufficient cause why the same should not be paid. These are therefore to charge and command you the said constable forthwith to take and convey the said A. F. to the house of correction [or *common gaol*] *at ——— in the county of ——— aforesaid, and there deliver him to the keeper thereof, together with this warrant. And I do hereby also command you the said keeper to receive the said A. F. into your custody in the said house of correction* [or *common gaol*] *and him there safely to keep to hard labour for the space of three months, unless he the said A. F. shall, before the expiration of the said three months, pay or cause to be paid to one of the overseers of the poor of the said parish of ——— on whose behalf the aforesaid complaint has been made the said sum of ——— so due and unpaid as aforesaid.*(a) *Given under my hand and seal the ——— day of ——— one thousand eight hundred and ———.*

(*L. S.*)

C c. Warrant to apprehend the Mother of a Bastard Child, in order to her being sent to the House of Correction; on stat. 50 *G.* 3. *c.* 51. *ante*, p. 333.

C c.

County of ——— } To the constable of ——— in the said county.

FORASMUCH as A. J. of ——— in the said county, yeoman, hath this day made oath before us J. P. and K. P., esquires, two of his majesty's justices of the peace in and for the said county, that A. M. late of ——— in the said county, single woman, on the ——— day of ——— last past, was delivered of a ——— bastard child at ——— in the parish of ——— in the said county, and that the said bastard child is now living and chargeable to the said parish of ———: These are therefore to command you in his majesty's name to apprehend and bring before us the said A. M. to answer the premises, and to be further dealt with according to law. Herein fail you not. Given under our hands and seals the ——— day of ———.

D d. Commitment thereupon, by stat. 50 *G.* 3. *c.* 51. § 2. *ante*, p. 333.

D d

County of ——— } J. P. *and* K. P., *esquires, two of the justices of our lord the king, assigned to keep the peace within the said county; To the constable of ——— in the said county, and to the keeper of the house of correction at ——— in the said county. These are to command you the said constable, in his said majesty's name, forthwith to convey and deliver into the custody of the said keeper of the said house of correction, the body of* A. M. *late of ——— in the said county, single woman, convicted before*

(*a*) See *Robson* v. *Spearman and another*, E. 1820. 3 *B.* & *A.* 493. *ante*, p. 616. n. (b).

us upon the oath of A. W. *of* ——— *in the said county, yeoman, with having been delivered of a (fe) male bastard child on the* ——— *day of* ——— *now last past, at* ——— *in the parish of* ——— *in the said county, which said bastard child is now living and chargeable to the parish of* ———: *And you the said keeper are hereby required to receive the said* A. M. *into your custody in the said house of correction, and her there to set on work during the term of* ——— [a space of time not exceeding twelve calendar months nor less than six weeks] *according to the form of the statute in that case made and provided. Herein fail you not. Given under our hands and seals the* ——— *day of* ——— *in the year of our Lord* 18—.

Note. This commitment must not be issued till the woman shall have been delivered for a calendar month.

E e.

E e. Order to seize the Goods, or the annual Profits of Lands, of the Father or Mother of Bastard Children, who shall run away and leave them upon the Charge of the Parish where born; on stat. 13 & 14 *C.* 2. *c.* 12. *ante*, p. 334.

County of ——— } To the churchwardens and overseers of the poor of the parish of ——— in the said county.

WHEREAS A. C. *and* B. C. *churchwardens, and* A. O. *and* B. O. *overseers of the poor of the parish of* ——— *in the said county, have made complaint unto us* J. P. *and* K. P. *two of his majesty's justices of the peace in and for the said county, (one whereof is of the quorum,) that* A. F. *late of the said parish of* ——— *hath run away out of the said parish, and that the place of his abode is not known; and that the said* A. F. *hath left his male bastard child, aged* ——— *years, and born within the said parish of* ——— *upon the charge of the said parish, although the said* A. F. *hath an estate sufficient to discharge such parish from the charge thereof: And whereas we the said justices, having duly examined into the cause and circumstance of the said complaint, as well upon oath as otherwise, it doth appear unto us, and we do adjudge that the said complaint is true; and we do also adjudge him the said* A. F. *to be reputed father of the said bastard child: These are therefore in his majesty's name to authorise you the said churchwardens and overseers of the poor of the said parish to take and seize so much of the goods and chattels, and to receive so much of the annual rents and profits of the lands of the said* A. F. *as shall amount to the sum of* ———, *which we do hereby appoint and order you to receive towards the discharge of the said parish, and for the bringing up and providing for the said bastard child; and you are hereby required to attend at the next general quarter sessions of the peace to be holden in and for the said county, in order that this present order may be then and there confirmed according to the form of the statute in that case made and provided. Given under our hands and seals the* ——— *day of* ——— *in the year of our Lord* ———.

Battery. See **Assault.**

Bawdy-houses. See **Lewdness**, and **Gaming**, Vol. II.

Beer. See **Excise**, Vol. II.

Behaviour. See **Surety**, Vol. V.

Bedford Level.

[Stat. 4 G. 4. c. 46.]

BY stat. 4 G. 4. c. 46. § 1. so much of stat. 27 G. 2. c. 19. § 49.(*a*) as excludes the benefit of clergy from persons convicted of the felony thereby created is repealed; and from the passing of this act (*viz.* 4th *July*, 1823) any person convicted of the said felony shall be liable at discretion of the court, to be transported beyond the seas for life, or for any time not less than 7 years, or to be imprisoned only, or to be imprisoned and kept to hard labour in the common gaol or house of correction for any time not exceeding seven years.

Bent.

[15 G. 2. c. 33.]

15 G. 2. c. 33.

BY stat. 15 G. 2. c. 33. § 6. Whereas on the north-west coasts of *England*, and especially in the county of *Lancaster*, the sea is bounded, and the lands are prevented from being overflowed, by large hills, the sand of which is so loose, that in dry weather it is thrown by the winds on the adjacent lands, to the damage thereof, and the danger of the inhabitants, who are exposed thereby to the inundation of the sea; to prevent which, the land-owners are at great charges annually to plant and maintain a sort of rush or shrub called *starr* or *bent;* but many disorderly persons pluck up and carry away the same to make mats and brushes; Therefore, if any person, without consent of the owner, shall cut, pull up, or carry away any starr or bent planted or set on the said hills on the north-west coasts of *England*, on complaint thereof

(*a*) Enacting, that if any person or persons shall maliciously cut, break down, burn, demolish, or destroy any bank, mill, engine, flood-gate, or sluice, making or erecting, or made or erected, supported or maintained, for answering the purposes specified in the said act, every person or persons so offending, being thereof convicted, shall be guilty of felony, and shall suffer death as felons, without benefit of clergy.

15 G. 2. c. 33.

on oath to one justice, the offender shall be summoned; and, on default of appearing, the justice shall issue his warrant to apprehend and bring him before him; and, being convicted on oath of one witness, or confession, he shall forfeit 20*s*. half to the informer and half to the owner of the bent, by distress; and for want of sufficient distress, be sent to the house of correction for three months, to be kept to hard labour; and for a second offence, he shall be committed to the house of correction for one year, to be whipped and kept to hard labour.

§ 7. And if any starr or bent shall be found within five miles of the said sand hills, the persons convicted of having the same in custody, shall forfeit 20*s*. in like manner, and for want of sufficient distress shall be committed to the house of correction, there to be kept to hard labour for three months.

§ 8. But this shall not restrain any persons from the exercise of any ancient prescriptive right to cut starr or bent on the sea coasts in the county of *Cumberland*.

Bigamy. See **Polygamy.**

Bills of Exchange. See **Promissory Notes,** and stat. 2 G. 2. c. 25. § 3. Vol. III. tit. **Larceny.**

Black act.

[9 G. 1. c. 22. — 6 G. 2. c. 37. — 10 G. 2. c. 32. — 27 G. 2. c. 15. — 31 G. 2. c. 42. — 43 G. 3. c. 58. — 4 G. 4. c. 46. c. 54.]

IN order to avoid repeating the same regulations so many times over, as the offences hereunder mentioned are treated of under their respective titles in the different parts of this book, it is thought proper to insert here at large the whole law relating to them altogether, and to refer to this title for the knowledge of the several particulars.

6 G. 2. c. 37.
10 G. 2. c. 32.
27 G. 2. c. 15.
31 G. 2. c. 42.

By stat. 9 *G*. 1. *c*. 22. (commonly called the *Waltham* black act, occasioned by the enormities committed in *Waltham Forest*, near *South Waltham*, in *Hampshire*, by persons in disguise or with their faces blacked), which act is required to be read at every sessions and leet, and by stat. 6 *G*. 2. *c*. 37. and stat. 10 *G*. 2. *c*. 32. which by several continuances were in force till *Sept*. 1. 1757, &c. and finally by stat. 31 *G*. 2. *c*. 42. were made perpetual; and also by stat. 27 *G*. 2. *c*. 15. it is enacted as followeth:

Persons armed and disguised appearing in any forest, chase, or park.

" If any person or persons, *being armed with swords, fire arms, or other offensive weapons*, and having his or their *faces blacked*, or being *otherwise disguised*, shall (1) appear in any forest, chase, park, paddock, or grounds inclosed with any wall, pale, or other fence, wherein any deer (*a*) have been or shall be usually kept; (see stat. 4 *G*. 4. *c*. 54. § 1. *post.*)

(*a*) Semble, repealed as to hunting or killing deer; see title **Game**, § VII. 1. *a*. (*Deer stealing*).

Or, (2) in any warren or place where hares or conies have been or shall be usually kept; (see *id.*) — Warren.

Or, (3) in any high road, open heath, common or down; (see *id.*) — High road, &c.

Or, (4) shall unlawfully and wilfully hunt, wound, kill, destroy, or steal any red or fallow deer; (see *id.*) — Hunting, &c. deer.

Or, (5) unlawfully rob any warren or place where conies or hares are usually kept; (see *id.*) — Robbing warrens.

Or, (6) shall unlawfully steal or take away any fish out of any river or pond; (see *id.*) — Stealing fish.

Or, (7) if any person or person (*that is, whether armed and disguised or not*) (see infra, *note*,) shall unlawfully and wilfully hunt, wound, kill, destroy, or steal any red or fallow deer, fed or kept in any place, in any of H. M.'s forests or chases, which are or shall be inclosed with pales, rails, or other fences, or in any park, paddock, or grounds inclosed, where deer have been or shall be usually kept; — Deer.

Or, (8) shall unlawfully and maliciously break down the head or mound of any fish-pond, whereby the fish shall be lost or destroyed; (see *id.*) — Mounds of fish-ponds.

Or, (9) shall unlawfully and maliciously kill, maim or wound any cattle; (*a*) — Cattle.

Or, (10) cut down or otherwise destroy any trees planted in any avenue, or growing in any garden, orchard or plantation, for ornament, shelter or profit; — Trees.

Or, (11) shall set fire to any house, barn or out-house, or to any hovel, cock, mow, or stack of corn, straw, hay or wood; (*b*) — Houses, &c.

Or, (12) shall wilfully and maliciously shoot at any person in any dwelling house, or other place. *Vide* 43 *G.* 3. *c.* 58. *post.* — Shooting at.

Or, (13) shall knowingly send any letter, without any name subscribed thereto, or signed with a fictitious name, demanding money, venison, or other valuable thing; [or signed with a fictitious name or letter, threatening to kill or murder any of H. M.'s subjects, or to burn their houses, out-houses, barns, stacks of corn or grain, hay or straw; 27 *G.* 2. *c.* 15.] See Letters (*Threatening.*) Vol. III. — Incendiary letters.

Or, (14) shall forcibly rescue any person being lawfully in custody of any officer or other person, for any the said offences [*i. e.* in stat. 9 *G.* 1. *c.* 22. described]; (See *id.*) — Rescuing such offenders.

Or, (15) shall by gift or promise of money, or other reward, procure any of his H. M.'s subjects to join him or them in any such unlawful act; — Procuring accomplices.

Or, (16) shall unlawfully and maliciously break down or cut down the bank of any river, or any sea bank, whereby any lands shall be overflowed or damaged. 6 *G.* 2. *c.* 37. § 5, 6. — River or sea banks. 6 G. 2. c. 37.

Or, (17) shall unlawfully and maliciously cut any hop-binds growing on poles, in any plantation of hops; § 6. (but see 4 *G.* 4. *c.* 46. *post*, p. 367.) — Hop-binds. 6 G. 2. c. 37.

Or, (18) shall wilfully and maliciously set on fire, or cause to be set on fire any mine, pit, or delph of coal or cannel coal; 10 *G.* 2. *c.* 32. § 6. — Coal mines, &c. 10 G. 2. c. 32.

By stat. 9 *G.* 1. *c.* 22. § 14. Every person so offending, being — 9 G. 1. c. 22. Felony without clergy.

(*a*) As to killing or wounding cattle, see title Cattle.

(*b*) See title Burning, post.

9 G. 1. c. 22.

thereof lawfully convicted, shall be adjudged guilty of felony, and shall suffer death as in cases of felony without benefit of clergy; but not to work corruption of blood, nor forfeiture of lands or goods.

Note.—I have added the words above (*whether armed and disguised or not*) to obviate an error which runs through most of the books, in a very material part of this statute. They do suppose that a person must be *armed and disguised* to commit any of the offences above mentioned, even the sending of a threatening letter, or persuading another to be an accomplice; whereas it seemeth somewhat clear, that to be armed and disguised is only necessary to constitute any of the six first offences, and that any person whatsoever may be guilty of any of the other following offences, whether armed and disguised or not.

4 G. 4. c. 46. Repealing 6 G. 2. c. 27. § 5, 6. in part; offenders liable to transportation.

But now by stat. 4 *G.* 4. *c.* 46. § 1. So much of stat. 6 *G.* 2. *c.* 37. (viz. § 5, 6.) as excludes the benefit of clergy from persons convicted of the felonies thereby created, shall be repealed, and from and after the passing of this act, (viz. 4th *July*, 1823,) any person convicted of the said felonies, or any of them, shall be liable at the discretion of the court to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned only, or to be imprisoned and kept to hard labour in the common gaol or house of correction, for any term not exceeding seven years.

4 G. 4. c. 54.

And stat. 4 *G.* 4. *c.* 54. § 1. After reciting the title of stat. 9 *G.* 1. *c.* 22. and § 1. of that act, which provides, "that if any person or persons being armed with swords, fire arms, or other offensive weapons, and having his or their faces blacked, or being otherwise disguised, shall appear in any forest, chase, park, paddock, or grounds inclosed with any wall, pale, or other fence, wherein any deer have been or shall be usually kept, or in any warren or place where hares or conies have been or shall be usually kept, or in any high road, open heath, common or down; or shall unlawfully and wilfully hunt, wound, kill, destroy, or steal any red or fallow deer, or unlawfully rob any warren or place where conies or hares are usually kept; or shall unlawfully steal or take away any fish out of any river or pond; or if any person or persons shall unlawfully and maliciously break down the head or mound of any fish pond, whereby the fish shall be lost or destroyed, or shall forcibly rescue any person being lawfully in custody of any officer or other person for any of the offences before mentioned; or if any person or persons shall, by gift or promise of money, or other reward, procure any of H. M.'s subjects to join him or them in any such unlawful act, every person so offending, being thereof lawfully convicted, shall be adjudged guilty of felony, and shall suffer death as in cases of felony without benefit of clergy: and whereas it is expedient, that a lesser degree of punishment should be provided for the said recited offences, and that the same punishment should be extended to persons accessary thereto:" Enacts that so much of the said recited act as excludes the benefit of clergy in the cases aforesaid shall be, and the same is hereby repealed; and that from and after the passing of this act, every person duly convicted of the felonies hereinbefore recited, or of any of them, or of procuring, counselling, aiding or abetting the commission thereof, shall be liable, at the discretion of the Court,

Repealed as to benefit of clergy, and offenders to be transported or imprisoned.

to be transported beyond the seas for the term of seven years, or to be imprisoned only, or to be imprisoned and kept to hard labour in the common gaol or house of correction, for any term not exceeding three years.

4 G.4. c.54.

Killing or maiming cattle or destroying trees, &c. and aiding, &c. Transportation or imprisonment.

§ 2. And whereas by the said recited act it is further enacted, "that if any person or persons shall unlawfully and maliciously kill, maim, or wound any cattle, or cut down or otherwise destroy any trees planted in any avenue, or growing in any garden, orchard, or plantation, for ornament, shelter, or profit, or shall forcibly rescue any person being lawfully in custody of any officer or other person for such offence, or shall, by gift or promise of money, or other reward, procure any of H. M.'s subjects to join him or them in any such unlawful act, every person so offending, being thereof lawfully convicted, shall be adjudged guilty of felony, and shall suffer death, as in case of felony, without benefit of clergy:" And whereas it is expedient that a lesser degree of punishment should be provided for the said last-recited offences, and that the same should be extended in the manner hereinbefore mentioned; be it therefore further enacted, that so much of the said recited act as is last hereinbefore recited, shall be and the same is hereby repealed, save only as to offences committed before the passing of this act, as to which the said recited act shall continue in force; and that from and after the passing of this act, if any person shall unlawfully and designedly kill, maim, or wound any cattle, whether from malice conceived against the owner, or otherwise, or shall unlawfully and maliciously cut down or otherwise destroy any trees planted in any avenue, or growing in any garden, orchard, or plantation, for ornament, shelter, or profit, or shall procure, counsel, aid, or abet the commission of the said offence, or of any of them, or shall forcibly rescue any person lawfully in custody of any officer or other person, for any of the said offences, every person so offending, being thereof lawfully convicted, shall be adjudged guilty of felony, and shall be liable, at the discretion of the court, to be transported beyond the seas for life, or for such term, not less than seven years, as the court shall adjudge, or to be imprisoned only, or to be imprisoned and kept to hard labour in the common gaol or house of correction, for any term not exceeding seven years.

Shall appear in any high road] *Rex* v. *Baylis and Reynolds*, *T.* 9 *G.*2. *Cas. temp. Hardw.* 291. The indictment was, that the defendants at *Ledford*, in the county of *Hereford*, being armed with offensive weapons, and having their faces blacked, and being disguised, did feloniously appear in the high road there, against the form of the statute. The evidence was, that there was a great number of rioters assembled with intent to cut down some turnpikes set up in that county, and the prisoners were at the head of them, with their faces blacked so as it could not be known who they were, having on women's gowns, caps, and straw hats, and each an axe in his hand, and they advancing foremost were taken by the constables then assembled by the justices of peace; and after they were taken and confined, the rest of the rioters did cut down the turnpikes. Ld. *Hardwicke* C. J. directed the jury thus: The several facts mentioned in the act are not to be taken as being parts of the same offence, but are every of them several offences; and this is a direct separate

9 G. 1. c. 22.

crime from the rest. It is a single crime, and is for appearing in the high road with faces blacked, and being otherwise disguised. All the other matters proved are but as circumstances, but were properly enough given in evidence, in order to shew the nature of the fact. Therefore, if upon the evidence you believe the prisoners did appear in the high road with their faces blacked, that is sufficient within the act, or that they were otherwise disguised, you are to find them guilty. The jury immediately, without going out of court, found them guilty; and they were ordered for execution.

Harris's case. To shoot at another person in a man's own house, is an offence within this act.

(12) *Shall wilfully and maliciously shoot at any person in any dwelling house, or other place.*] *John Harris* was tried before *Rooke* J. at *Salop Lent Ass.* 1801, for wilfully shooting at *Thomas Banks*. He was convicted and received sentence; but execution was respited, to take the opinion of the judges on the following facts. *Thomas Banks* went with a warrant from the sheriff of *Salop* to execute a writ of possession on the prisoner's house. The warrant was addressed to three persons, the sheriff's bailiffs, and *after it was sealed, but before it was sent out of the office*, an interlineation was inserted by the under-sheriff in these words; "and to *Jeremiah Powell* and *Thomas Banks*, my bailiffs on this occasion only." *Powell* and *Banks* went to the prisoner's house to execute the writ of possession, and desired admittance. The prisoner looked out of the window, and they shewed him their warrant. The prisoner said, that the first person who came in, he would blow his brains out. *Banks* then went for more help, and returned with another man. They then burst open the door of the house, and the prisoner fired a blunderbuss at them, and wounded *Banks* very severely in the knee. It was objected by the prisoner's counsel at the trial, *first*, that the warrant gave no authority to *Banks* or *Powell*, their names being interlined after the seal was affixed to it. *Secondly*, that the prisoner having shot at *Banks* in his own house, this was not within the meaning of the statute. But the judges held the conviction right. *Harris's Case, Shrewsbury Lent Ass.* 1801. *MS. C. C. R.* 1 *East, P. C. Add.* xviii. 2 *Leach*, 929. *S. C.* Vide *Padfield* v. *Cabell and Others*, *Willes's Rep.* 411. which was referred to.

Shall knowingly send any letter signed with a fictitious name, threatening to burn houses, &c.] Vide title Letter, Vol. III.

9 G. 1. c. 22. The trial may be in any county in *England*.

Being thereof lawfully convicted.] By stat. 9 *G.* 1. *c.* 22. § 14. every offence that shall be done or committed contrary to this act shall and may be enquired of, examined, tried and determined in any county in *England*, in such manner and form, as if the fact had been therein committed.

Mortis's case.

Richard Mortis was tried at the *O. B. Feb. Sess.* 1771, upon an indictment for maliciously shooting at *Thomas Parkinson* in the county of *Hertford*, and found guilty, and executed.—It was holden by the judges, in this case, that the words of the statute extend to give the prosecutor a power to prosecute in any county at his own option. He cannot, however, exercise this right for the purposes of injustice and oppression, as the statute expressly gives it *for the better and more impartial* trial of the indictment. *Mortis's Case*, 2 *Black. Rep.* 733. 1 *Leach*, 73. 1 *East's P. C.* 415.

Apprehending offenders.

§ 4. And for the more easy and speedy bringing the offenders against this act to justice, if any person or persons shall be

charged with being guilty of any the offences aforesaid, before any two justices of the county where such offence or offences were or shall be committed, by information of one or more credible person or persons upon oath by him or them to be subscribed, the said justices shall forthwith certify under their hands and seals, and return such information to one of the principal secretaries of state, who is hereby required to lay the same, as soon as conveniently may be, before his majesty in his privy council; whereupon his majesty may make order in such his council, requiring and commanding the offender to surrender himself within forty days, to any of the justices of the king's bench, or to any justice of the peace, to the end that he may be forthcoming to answer the said offence according to due course of law; which order shall be published in the *London Gazette*, and shall be forthwith transmitted to the sheriff of the county where the offence was committed, and shall (within six days after the receipt thereof) be proclaimed by him or his officers, between ten and two of the clock, in the market places, on the market days, of two market towns in the same county, near the place where such offence shall have been committed; and a true copy of such order shall be affixed upon some public place in such market towns; and if such offender shall not surrender himself pursuant to such order, he shall, from the day appointed for his surrender, be adjudged to be convicted and attainted of felony, and shall suffer pains of death, as in case of a person convicted and attainted by verdict and judgment of felony, without benefit of clergy. And the court of King's Bench, or justices of oyer and terminer or general gaol delivery for the county, where the offence is sworn in the information to have been committed, upon producing to them such order in council, under seal of the said council, may award execution accordingly.

9 G.1. c.22.

By § 5. And if any person, after the time appointed for surrender shall be expired, shall conceal, aid, abet, or succour such offender, knowing him to have been so charged, and to have been required to surrender himself by such order, and shall be lawfully convicted thereof; he shall be guilty of felony without benefit of clergy.

§ 6. But this shall not hinder any judge, justice of the peace, magistrate, officer, or minister of justice, from apprehending and securing such offender, by the ordinary course of law; and if he be taken and secured before the time of surrender, he shall have his trial by due course of law.

Damages by the hundred.

§ 7. And the inhabitants of the hundred shall make full satisfaction and amends (not exceeding 200*l.*) for the damages sustained by the killing or maiming of cattle; cutting down or destroying trees; setting fire to any house, barn, or out-house, hovel, cock, mow or stack of corn, straw, hay or wood; breaking or cutting down the bank of any river, or any sea bank, whereby any lands shall be overflowed or damaged; cutting hop-binds growing on poles in any plantation of hops; setting on fire, or causing to be set on fire, any mine, pit, or depth of coal or cannel coal; the same to be rateably taxed, and levied, as in cases of robbery, by the statute of 27 *El. c.* 13.

§ 8. But no person shall be enabled to recover damages, unless he shall, by himself or servant, within two days after the damage

9 G. 1. c. 22.

done, give notice of the offence, unto some of the inhabitants of some town, village, or hamlet near to the place where the fact was committed; and shall, within four days after such notice, give in his examination on oath, or the examination on oath of his servant who had the care of the same, before a justice of the county, liberty, or division where such fact shall be committed, inhabiting in or near the hundred, whether he knows the person or persons that committed the fact, or any of them; and if upon such examination it be confessed that the examinant knows the said persons, or any of them, then such person confessing shall be bound by recognizance to prosecute the offender by indictment or otherwise according to law.

Cook v. Pimhill.

Cook v. *The hundred of Pimhill*, 8 *East*, 173. In an action upon this statute, to recover the value of corn wilfully and feloniously set on fire in the parish of B. the declaration averred notice of the said offence to have been given "to divers of the inhabitants of the *said parish* within the hundred and county aforesaid, being near to the said place where, &c. according to the form of the statute," &c. and a verdict was given for the plaintiff. A rule *nisi* was obtained for arresting the judgment, because the averment was not that notice was given to the inhabitants of some "town, village, or hamlet near the place," &c. but only to the inhabitants of the "*parish*" near to the place: And upon shewing cause, the court held that after verdict it would be presumed, that in receiving proof of the allegation that notice was given to the inhabitants of the parish, evidence was also received of notice having been given to the vill of *B*. But such evidence might have been rebutted by shewing that the parish contained several vills, and that the notice was not given to a near vill, but to one at a distance from the place where the fact was committed, which would be a bad notice. But in the absence of shewing this, it would be intended that the parish of *B*. is a vill.

It has been decided by a variety of cases, that every *parish* shall *primâ facie* be intended to be a *vill*, unless the contrary be shewn. See Vol. IV. tit. Poor, § I. 2.

9 G. 1. c. 22.

§ 9. And if any one of the offenders be apprehended and lawfully convicted in six months after the offence committed, the hundred shall not be liable.

Commencement of action.

§ 10. And the action shall not be commenced but within one year after the offence committed.

Persons killed or wounded in apprehending offenders.

§ 12. And if any person shall apprehend or cause to be convicted, any such offender above mentioned, and shall be killed, or wounded so as to lose an eye, or the use of any limb, in apprehending or securing, or endeavouring to apprehend or secure any such offender; upon proof thereof made at the general quarter sessions of the peace for the county, liberty, division or place where the offence was committed, or the party killed or wounded, by the person so apprehending and causing the offender to be convicted, or the person so wounded, or the executors or administrators of the party killed, the justices of the said sessions shall give a certificate thereof to the person wounded, or to the executors or administrators of the person killed, by which they shall be entitled to receive of the sheriff 50*l*. to be allowed in his accounts; which he is required to pay in thirty days from the

time the certificate shall be produced and shewn to him, on pain of forfeiting to the party 10*l.*, for which, and for the penalty, the party may bring his action upon the case.

9 G. 1. c. 22.

By stat. 10 *G.* 2. *c.* 32. § 4. 6. the several provisions of stat. 9 *G.* 1. *c.* 22. are extended to the offences of breaking banks, cutting hop-binds, and setting on fire coal-mines; offences made felony without clergy by stats. 6 *G.* 2. *c.* 37. and 10 *G.* 2. *c.* 32.

10 G. 2. c. 32. Breaking banks, cutting hop-binds, firing coal mines.

But by stat. 4 *G.* 4. *c.* 46. so much of stat. 6 *G.* 2. *c.* 37. as excludes clergy from persons convicted of the felonies thereby created, is repealed, and from 4th *July*, 1823, persons convicted thereof shall be liable at discretion of the court to transportation for life, or for not less than 7 years, or to be imprisoned only, or to be imprisoned and kept to hard labour in the common gaol or house of correction for not exceeding 7 years.

4 G. 4. c. 46.

And by stat. 43 *G.* 3. *c.* 58. (called *Lord Ellenborough's act,*) after reciting, that "whereas divers cruel and barbarous outrages have been of late wickedly and wantonly committed in divers parts of *England* and *Ireland*, upon the persons of his majesty's subjects, either with an intent to murder, or to rob, or to maim, disfigure or disable, or to do other grievous bodily harm to such subjects: And whereas the provisions now by law made for the prevention of such offences, have been found ineffectual for that purpose: And whereas certain other heinous offences, committed with intent by burning to destroy or injure the buildings, and other property of his majesty's subjects, or to prejudice persons who have become insurers of or upon the same, have been of late also frequently committed; but no adequate means have been hitherto provided for the prevention and punishment of such offences;" it is therefore enacted, § 1. "that if any person or persons, after the 1st day of *July* 1803, shall, either in *England* or *Ireland* (*a*), wilfully, maliciously, and unlawfully shoot at any of his majesty's subjects, or shall wilfully, maliciously, and unlawfully present, point, or level any kind of loaded fire-arms at any of his majesty's subjects, and attempt by drawing a trigger, or in any other manner, to discharge the same at or against his or their person or persons, or shall wilfully, maliciously, and unlawfully stab or cut any of his majesty's subjects, with intent in so doing, or by means thereof, to murder, or rob, or to maim, disfigure, or disable such his majesty's subject or subjects, or with intent to do some other grievous bodily harm to such his majesty's subject or subjects, or with intent to obstruct, resist, or prevent the lawful apprehension and detainer of the person or persons so stabbing or cutting, or the lawful apprehension and detainer of any of his, her, or their accomplices for any offences for which he, she, or they may respectively be liable by law to be apprehended, imprisoned, or detained; or shall

43 G. 3. c. 58. Lord Ellenborough's act.

Shooting at, or attempting to shoot, stabbing, or cutting any person, with intent to murder, maim, &c. or to do some grievous bodily harm, or to resist lawful apprehension, felony without clergy.

(*a*) This act was not meant to create a felony beyond the limits of *England* and *Ireland*, and is not extended by stat. 39 *G.* 3. c. 37. to an offence committed on the high seas out of *England* or *Ireland*, viz. at *Tarragona Mole*. So held by ten judges in *R.* v. *Amarro*, on case reserved by *Le Blanc* J. at the Admiralty *July Sess.* 1814. *MS. C. C. R.*

By stat. 1 *G.* 4. c. 90. § 11. offences within 43 *G.* 3. *c.* 58. committed upon the high seas, shall be tried as felonies under 28 *H.* 8. c. 15. See *ante*, tit. Admiralty Courts.

43 G. 3. c. 58.

wilfully, maliciously, and unlawfully set fire to any house, barn, granary, hop-oast, malthouse, stable, coach-house, outhouse, mill, warehouse, or shop, whether such house, barn, granary, hop-oast, malthouse, stable, coach-house, outhouse, mill, warehouse, or shop shall then be in the possession of the person or persons so setting fire to the same, or in the possession of any other person or persons, or of any body corporate, with intent thereby to injure or defraud his majesty or any of his majesty's subjects, or any body corporate, that then in every such case, the person or persons so offending, their counsellors, aiders, and abettors, knowing of and privy to such offence, shall be and are hereby declared to be felons, and shall suffer death as in cases of felony without benefit of clergy."

But if such stabbing or cutting were so committed, that if death had ensued it would not have been murder, the party charged is to be acquitted.

" Provided always, that in case it shall appear on the trial of any person or persons indicted for the wilfully, maliciously, and unlawfully shooting at any of his majesty's subjects, or for wilfully, maliciously, and unlawfully presenting, pointing, or levelling any kind of loaded fire-arms at any of his majesty's subjects, and attempting, by drawing a trigger, or in any other manner, to discharge the same at or against his or their person or persons, or for the wilfully, maliciously, and unlawfully stabbing or cutting any of his majesty's subjects with such intent as aforesaid, that such acts *of stabbing or cutting* (a) were committed under such circumstances as that if death had ensued therefrom the same would not in law have amounted to the crime of murder, that then and in every such case the person or persons so indicted shall be deemed and taken to be not guilty of the felonies whereof they shall be so indicted, but be thereof acquitted."

1 G. 4. c. 90. Offences within 43 G. 3. c. 58. committed upon the high seas, to be tried as felonies under 28 H. 8. c. 15.

By stat. 1 *G*. 4. *c*. 90. § 2. It is enacted that all and every the crimes and offences mentioned in stat. 43 *G*. 3. *c*. 58. which, after the passing of this act, shall be committed upon the high seas, out of the body of any county of this realm, shall be, and they are hereby declared to be offences of the same nature respectively, and to be liable to the same punishments respectively, as if they had been committed upon the land in *England* or *Ireland*, and shall be enquired of, heard, tried, and determined and adjudged, in the same manner as treasons, felonies, murders, and confederacies are directed to be by stat. 28 *Hen*. 8. *c*. 15.

Shall wilfully, maliciously, and unlawfully shoot at.] The following case was submitted by Mr. Justice *Le Blanc* to the Judges in *M. T.* 1805.

To shoot at another with a pistol loaded with gunpowder and wadding only, is an offence within stat. 43 G. 3. c. 58.

Rex v. *Kitchen*, *Bridgewater Sum. Ass.* 1805. *MS. C. C. R.* The prisoner was tried and convicted on an indictment for maliciously shooting at *Elizabeth Monslow, with a loaded pistol,* with intent to kill and murder her against the statute. There were other counts in the indictment, some stating the intent to be to do her some grievous bodily harm, and others to disfigure her, and some stating the pistol to be loaded with gunpowder only, and others stating it to be loaded with gunpowder and other destructive materials. — There was not any direct and positive evidence of the pistol, which was fired close to the prosecutrix's ear, being loaded with any thing besides gunpowder and wadding or paper,

(a) These words " of stabbing or cutting," should have been omitted. From a note in the late Mr. J. *Grose*'s copy of the *MS. Sum.*

43 G.3. c.58.

but there were circumstances from whence to infer, that it was loaded with some other destructive materials, and the evidence of the surgeon, as to his opinion from the nature of the wound, was positive that it must have been so loaded: it is however very possible, that it might not have been loaded with any thing except powder and paper. The learned judge directed the jury, that whether the pistol was loaded with gunpowder and ball or other destructive materials, or whether it was loaded with gunpowder and paper only, if the prisoner fired so near to the person of the prosecutrix and in such a direction as that it probably would kill her, or do her some grievous bodily harm, and with intent that it should do so, the case was within the statute: but his lordship desired them, if they found him guilty, to tell him whether they were satisfied that the pistol was loaded with any destructive materials besides gunpowder and paper or not. The jury found the prisoner guilty, and said, they were satisfied that the pistol was loaded with some destructive material besides powder and wadding.

Kitchen's case.

Application was afterwards made to the crown for mercy, on the ground that the pistol was not loaded with any thing but powder and paper, and supposing that to be the fact, the question submitted to the judges was, whether the direction to the jury was right. — On 16th *November*, 1805, all the judges (except *Heath* J. who was absent from illness) were of opinion, that the prisoner was properly convicted and the direction right.

What shall be considered *loaded* fire-arms.

To constitute the offence of attempting to discharge loaded fire-arms, they must be so loaded as to be capable of doing the mischief intended. If part of the loading has fallen out, though without the knowledge of the party, and what remains is inadequate to effect the mischief, the case is not within the act. The case is not within the act, if there be not such a loading at the time as is likely to produce a discharge, though it is possible it may produce it.

Rex v. *William Carr, O. B. Jan. Sess.* 1819. Cor. *Holroyd* J. *M S. C. C. R.* The prisoner was tried for wilfully, maliciously, and unlawfully pointing and levelling a blunderbuss loaded with gunpowder and leaden shot, and attempting by drawing the trigger to discharge the same against *William Billingsly*, with intent to murder him. There were two other counts, one charging the intent to be to disable *W. B.* and the other to do him some grievous bodily harm. It appeared in evidence that *W. B.* had loaded the blunderbuss with gunpowder and leaden shot, and *primed* it a *fortnight before* the offence was committed, but had not examined it afterwards; and that at the time when the prisoner, having levelled the blunderbuss, pulled the trigger, the flint struck fire, but the flash was of the flint only *and not of any priming*. The loading was afterwards discharged and fired from the blunderbuss at the police office by accident without any fresh priming. The jury found the prisoner guilty, but they at the same time added that the *blunderbuss was not primed* at the time when the prisoner drew the trigger. On case — a great majority of the judges considered this equivalent to a finding that the blunderbuss was not so loaded as to be capable of doing mischief by having the trigger drawn, and if not, that it was not loaded within the meaning of the act. — The prisoner was accordingly pardoned.

Shall wilfully, maliciously, and unlawfully stab or *cut.*] The words "*stab* or *cut*" relate only to such wounds as are inflicted by a sharp instrument, as appears from the following cases, which have been decided by the judges.

An instrument capable of cutting, and proved to have actually cut, although not ordinarily used for that purpose, is within stat. 43 G. 3. c. 58.

Rex v. *Hayward*, otherwise *Harwood*, *O. B. January*, 1805. Cor. *Macdonald* C. B. The prisoner was indicted on statute 43 *G.* 3. *c.* 58. § 1. The indictment charged a larceny to have been committed by the prisoner, by stealing certain goods of *Richard Crabtree* of the value of 5*s.*: That having committed the felony, he made an assault upon *Benjamin Chantry*, and with a certain sharp instrument then and there feloniously, &c. did strike, stab, and cut the said *Benjamin Chantry* in and upon the head, with intent in so doing, by means thereof, to obstruct, resist, and to prevent the lawful apprehension and detainer of him *Richard Hayward* (the prisoner).—All the counts, which were four in number, charged the striking, stabbing, and cutting only, with intent to prevent the lawful apprehension and detainer, &c. A larceny was proved to have been committed in the house of *Crabtree*, into which the prisoner and another had entered. They were seen coming out of the house by persons who had watched them The prisoner was pursued and seized by one gentleman from whom he disengaged himself, but was still pursued, and afterwards seized by *Benjamin Chantry*, whose evidence was as follows: That on the evening of the 20th of *October* last, about seven o'clock, he heard very much a cry of stop thief: that he went out of his shop and saw a gentleman pursuing a man, and crying, stop thief: That he stept over the way to meet him, following him across the street. The prisoner fell down, and he (the witness) caught hold of him, in order to apprehend him: That he led the prisoner along quietly forty or fifty yards: That Mr. *Halford*, the gentleman who had been pursuing him, said to the witness, that the prisoner had something in his hand he would strike him with; and before he looked to see, the prisoner did strike him with an iron on the head. Several bones have been taken out, and more were expected. He then proved that the iron, which was produced at the trial, was taken out of the prisoner's hand.—*Stephen Parrot*, surgeon of the *Middlesex* hospital, said, that the skull was fractured, and that nothing was so likely as that it should have been done with an instrument such as that which was produced, and had been proved to be the instrument made use of by the prisoner.—That a part of the bone was cut away from the skull like a goose-quill, three inches and a half long. The Court put several questions to him, to ascertain whether the piece of the skull was taken off by breaking, splintering, tearing, &c. or clearly by cutting; to which he answered, that a complete piece was taken out as if sawed out, not broken out, but cut out. The witness having assimilated the bone taken out to a quill, he was asked if it appeared to be cut off in the same manner as part of a quill is cut off, in beginning to make a pen; to which he answered, "Exactly so." Upon this evidence the prisoner was convicted. Lord C. B. *Macdonald* was inclined at the trial to think, that as the instrument was proved by the surgeon to be capable of cutting, and actually to have cut, and as the act has mentioned cutting generally, without reference to any description of instrument, that the conviction was proper. But some doubts arising on the case, as the instrument which was used was not of a sort originally in-

tended for cutting, nor ordinarily used for that purpose, being adapted for the purpose of prising open doors, drawers, chests, &c. and that the intent of the prisoner was not to cut with such an instrument, but to break or lacerate the head; the case was referred to the consideration of the judges, who held the conviction right, and the prisoner was accordingly executed.

Hayward's case. Cutting instrument.

Rex v. *Atkinson, York Lent Ass.* 1806. Cor. *Chambre* J. *MS. C. C. R. Peter Atkinson* was indicted on stat. 43 *G.* 3. *c.* 58. with feloniously, wilfully, &c. striking, stabbing and cutting *Elizabeth Stockden,* with intent, as laid in some of the counts, to kill and murder her, and in others to do her grievous bodily harm. Some of the counts charged the acts to be done with a hammer, the others generally without mention of the instrument. The effect of *Elizabeth Stockden*'s evidence was, that she and the prisoner were both servants to *Michael Scholefield;* there was no other servant in the family, and their master and mistress being from home, no one slept in the house but themselves on the night of the 22d of *September*. In the morning of the 23d, she got up about six, and having unlocked her bed-chamber door, she found the prisoner standing close to it, with his face to the door; he said he was going to kill her; he had a smallish claw hammer in his right hand, with which he struck her first over the nose. Before he struck she saw the claw distinctly, and that the blow was with the claw end of the hammer; it was sharp, and cut her nose near an inch in length, and down to the bone; the blow knocked her down; she lay upon her face; then he beat her on the right side of her head with the hammer; he kept her down with his hands without speaking to her at all; he struck her seven times on the right side of her head, and six times on her left; but whether with the claw or the other end of the hammer, she knew no otherwise than from what the surgeon told her, as she continued lying on her face; he left her lying on the landing place, where she continued a quarter of an hour, or better, from inability to rise. — The surgeon, who arrived about eight in the morning, found *Elizabeth Stockden* with a great deal of blood upon her clothes, and many wounds on her head, one near an inch long on the right side of the nose, quite to the bone; those on the head were not quite so long, but the greatest part of them went quite down to the bone. He said he could speak with certainty to twelve in number on her head; but he was not certain that they were all inflicted by the same instrument; some were simple incisions, others contused and lacerated; that on the nose was a simple incision, appearing as if made by a sharp instrument. The greatest part of the wounds on the head seemed contused, but all might have been done with the same instrument, by which the nose was cut. The difference might arise from the different situation of the wounds; according to the situation of the parts. — The claw of a hammer might give a wound, accompanied by some contusion. A blow with the bony part of the fist, he thought, might cut in such a way as not easily to be distinguished from a simple incised wound. He observed the wounds on the head with a view to form a judgment whether they were given with a hammer, and some of them seemed as if given by the two sides of the claw of the hammer, there being a wound or cut on each side, and a space between unhurt. There were several in that state; and on

A striking over the face with the sharp or claw part of a hammer, is a *cutting* within this act.

Atkinson's case. Cutting instrument.

comparing the extent of the parts unhurt, lying between the wounds, they seemed to correspond in size, so that the wounds had the appearance of being given by the same instrument. No hammer was found that could be ascertained to be what the prisoner had used, so that there was no opportunity of judging by inspection in what degree it was calculated to be used as a cutting instrument. It was left to the consideration of the jury, whether the wounds were given with the claw part of the hammer, and they found the prisoner guilty. Sentence was passed upon him, but execution respited, to take the opinion of the judges, whether the evidence of the nature of the wounds and of the instrument used was sufficient to bring the case within stat. 43 *G.* 3. *c.* 58.? The judges held the conviction to be right, and the prisoner was executed. Vide *Hayward's case, ante*, p. 374.

N.B. Had he attempted to kill her with the blunt end of the hammer, he would have been guilty of a misdemeanor only. 4 *Bl. Com.* 208. (n.) edit. 1809.

Cutting is properly a wounding with an instrument having a sharp edge; *stabbing* is a wounding with a pointed instrument. 1 *Russ.* 859. See also *Johnson's Dictionary*.

In the following case, it was held that a blow with a square iron bar, which inflicted a *contused* or *lacerated* wound, was not a cutting within the act.

A blow with a square iron bar, which inflicted a contused or lacerated wound, held not a *cutting* within the act.

John Adams was tried at the *O. B. Jan. Sess.* 1808, before *Lawrence* J. on an indictment, the first count of which charged him with feloniously, wilfully and maliciously making an assault on *William Barret*, and with a certain sharp instrument striking and *cutting* him in and upon his head, with intent to murder him, against the form of the statute. A second count charging the same facts with intent to disable *Barret;* and a third, with intent to do him great bodily harm. On the evidence it appeared, that on the 9th of *June* 1807, *William Barret*, the prosecutor, being the constable of *Poplar* and *Blackwall*, and *John Lee*, being the head-borough, having heard that there was a riot in a street called *Noble-street*, went into that street about twelve o'clock at night, with a view of keeping the peace; that when they got there, the rioters had dispersed; but observing a woman, who turned out to be the prisoner's wife, standing at an alley in that street, *Barret* told her to go home, or he should find her one, and immediately upon his saying this, the prisoner (who probably mistook him and *Lee* for some men, who, as he alleged in his defence, had been in his house that night, and treated his wife with great indecency,) rushed by the woman, and with some weapon struck *Lee* two blows, the last of which knocked him down, and directly afterwards struck the prosecutor with the same weapon several blows on the head and body, pursuing him near two hundred yards, when he fell, and was there left by the prisoner senseless, with a cut, as the prosecutor expressed himself, on one side of his head, of two inches long. The weapon, as described by *Lee*, was about two feet and a half long, heavy, and sharp withal, and, as he supposed, iron, but he did not observe its shape. *Barret* described it as being about three-feet long, of the same thickness throughout, and square, and from the blows he received, and its appearance, he judged it to be *a square iron bar;* one of the blows divided the prosecutor's hat in a straight line for about the length

of an inch or more; another blow, which occasioned the wound in his head, made a dent in the hat of some length, and in some degree broke the texture of the hat, but it did not divide it; and the wound, as described by the surgeon who attended the prosecutor, was about two inches long, penetrating the integuments to the skull, and appeared to him to have been given by a blunt, and not by a sharp instrument, there being a great deal of contusion down the sides of the wound, being what the surgeons call a contused and lacerated wound, and not what is called an incised wound. There was no direct proof of any intention in the prisoner to cut the prosecutor. Under these circumstances, the learned judge directed the jury, if they believed the evidence, to find the prisoner guilty, reserving it for the opinion of the judges, whether the facts, as given in evidence, were sufficient to establish a wilful cutting within the meaning of the 43 *G.* 3. *c.* 58., and the jury found the prisoner guilty. The judges held the conviction wrong, the wound having been inflicted not with a sharp, but a blunt instrument. *Rex* v. *Adams, O.B. Jan. Sess.* 1808, *MS. C. C. R.*

Adams's case.

So also in a case before *Dallas* C. J. and *Burton* J. at *Chester Assizes*. It was ruled, that a blow with the handle of a windlass was not a cutting within the act, though it made an incision. *Anon.* 5 *Ev. Coi Stat.* Part v. c. 4. p. 334. note (2.)

Cutting with intent to do grievous bodily harm.

What shall be considered a cutting *with intent to do some grievous bodily harm.*] An extraordinary and shocking case was tried before *Graham* B. at *Chelmsford Lent Ass.* 1818. The prisoner was indicted on Lord *Ellenborough*'s act. The only count to which the evidence applied was, that with a sharp instrument he feloniously and maliciously did cut *Mary Evans* upon her private parts, with intent in so doing to do her a grievous bodily harm. The fact of cutting, as charged, was proved by the evidence of *Mary Evans*, an intelligent girl of ten years of age, in which she was corroborated by the testimony of her mother and the surgeon who had examined her.—The learned judge told the jury, that they were to consider whether this was not a grievous bodily injury to the child, though eventually not dangerous; that such it seemed to him, and as to the intent (though meant a rape) he did that which the law made a distinct crime, viz. intentionally to do the child a grievous bodily harm. He was not the less guilty of that crime, because his principal object was another. That the intention might be inferred from the act itself. The jury found the prisoner guilty, but sentence was respited to take the opinion of the judges, all of whom held the conviction right.

N. B. At the following assizes the prisoner received sentence of death, and was left for execution. On 30th *July* following, he was respited till the 14th of *August*; and ultimately he was ordered to be imprisoned two years in the house of correction.

In an indictment on stat. 43 G. 3. c. 58. Semble, that the words, "*some other grievous bodily harm*," must be construed to extend

R. v. *Akenhead, Northumberland Summer Ass.* 1816. Cor. *Bayley* J., *Holt's Rep.* 469. The prisoner was indicted on stat. 43 *G.* 3. *c.* 58. The circumstances were these:—The prosecutor and some other men had got hold of a woman, who, as they conceived, had been using another person ill. They said that she deserved to be ducked in a trough which was near; but it did appear that such was their intention. The prisoner, who was at some distance at the time, on being informed that they were using the woman ill, ex-

Akenhead's case.

claimed, "I have got a good knife," and immediately rushed to the place where she was. He entered among the crowd, and instantly struck the prosecutor on the shoulder with a knife. The prosecutor turned round upon him; a struggle ensued between them; and in that struggle the prosecutor received other wounds. After they had fought for some time, the prisoner dropped the knife and ran away. The wound upon the prosecutor's shoulder was about seven inches long, and two deep; and the lap of one of his ears was cut. There was likewise a slight wound on the gland of his neck, and a cut on his left arm. The indictment contained counts; first, for an intent to murder, &c.; and, second, to maim, disfigure, and disable; third, and do some other grievous bodily harm. *Williams*, for the prisoner, objected.—First, that the first and second counts in the indictment were not supported by the evidence. The only question was upon the third count; did the prisoner mean to do some "other grievous bodily harm" to the prosecutor? He submitted that the wounds were not of that nature from which grievous bodily harm could ensue. It was a scuffle in which a knife was used accidentally, without any settled design to "maim, disfigure, or disable," or to do "other grievous bodily harm" to the prosecutor. Secondly, the wounds were not inflicted in a part of the body, which could produce such a consequence. *Bayley* J. entertained some doubts on the circumstances; the wounds were not in a vital part; and *quære*, whether the injury done was a grievous bodily harm contemplated by the act? Had death ensued, would it have been more than manslaughter? And was not this limit clearly understood throughout the act? His lordship directed an acquittal under all the circumstances of the case.

—— to such wounds only as are inflicted upon a vital part of the body.

Rickett's case. It is not an offence within 43 G. 3. c. 58. against *maliciously cutting, with intent to resist lawful apprehension*, if the cutting took place in an attempt to apprehend the prisoner previous to notification to him of the purpose for which he was laid hold of.

Stabbing or cutting with intent to obstruct, resist, or prevent the lawful apprehension and detainer of the person or persons so stabbing or cutting.] *R.* v. *Ricketts*, *Worcester Sum. Ass.* 1811, Cor. *Lawrence* J., 3 *Campb.* 68. Indictment on stat. 43 *G.* 3. *c.* 58. for maliciously cutting one *Webb*, with intent to obstruct, resist, and prevent the lawful apprehension and detainer of the prisoner. The prisoner stole some wheat, which was soon after found concealed in a field. *Webb* watched near the place, and on the prisoner's coming and taking up the bag containing the wheat, pursued and seized him, without desiring him to surrender or stating for what reason he was apprehended. A scuffle ensued, during which, before *Webb* had spoken, the prisoner drew a knife and cut him across the throat.—*Lawrence* J. As *Webb* did not communicate to the prisoner the purpose for which he seized him, this case does not come within the statute. If death had ensued, it would only have been man-slaughter. Had a proper notification been made before the cutting, the case would have assumed a different complexion. The prisoner must be acquitted upon this indictment. (*a*)

(*a*) Mr. *Campbell* adds, in a note,—But if a constable acting within his district where he is *generally known*, produces his staff of office, the law will presume that the party to be apprehended had due notice of his intent, without a verbal notification. *Gordon's Case*, 1 *East's P. C.* 315. And it is sufficient for a constable to say he arrests *in the king's name*. 1 *Hale*, 583. Where it appears that the party *knows the officer* and his business, the law requires no express notice to be given. Thus, where *Pew* drew his sword on a bailiff who came to arrest him, and said "Stand off, I know you well enough: come at your peril," and upon

Mead's case.

Under 43 G. 3. c. 58. for cutting and maiming a sheriff's officer, it is incumbent on the prosecutor, not only to produce the warrant made out by the sheriff to the officer, but likewise the writ.

R. v. *W.* & *R. Meade*, *York Summ. Ass.* 1817. Cor. *Wood* B. *Holt's Rep.* 593. The prisoners were indicted on stat. 43 *G.* 3. *c.* 58. for cutting and maiming certain persons, assisting *M.* a sheriff's officer, who had a warrant directing him to arrest *William Meade*, on mesne process out of K. B. The warrant was first put in and proved. It was directed to one *M.*, a sheriff's officer, residing at *W.* The arrest was made at *S.*, which was proved to be in the liberty of *P.* And it appeared that the lord of the manor and chief bailiff of the liberty had the sole right of executing writs within the liberty. The writ was not produced. Upon this it was objected, 1. That the prosecutors were bound to produce the writ. The sheriff was only a ministerial officer of the court above, and the bailiff was merely his servant. The warrant could not put the bailiff in any better situation than the sheriff himself would be placed in if he had executed the process; and it is perfectly clear that his own warrant could confer no additional authority upon him; and that, if in such case an action were brought against him for false imprisonment, he would be obliged to set out the writ in his plea of justification. 2. That the officer had taken upon him to make an arrest where the sheriff had no authority to execute process at all. 3. There was no evidence that there was a *non omittas* clause in the writ, if there were not a *non omittas* clause, the arrest ought to have been made by the chief bailiff of the liberty, or his officers. *Wood* B. was of opinion, that there was a failure in proof of authority on both these grounds, and the prisoners were acquitted accordingly.(*a*)

Black Lead.

[25 G. 2. c. 10.]

25 G. 2. c. 10.

By stat. 25 *G.* 2. *c.* 10. § 1. every person who shall unlawfully break, or by force enter into, any mine or wad hold of wad or black cawke, commonly called black lead, or into any pit, shaft, adit, or vein thereof; or shall unlawfully take or carry away from thence any wad, black cawke, or black lead, although not actually broke, or by force entered into by such offender; or shall aid, hire, or command any person to commit any of the said offences, shall be guilty of felony, and the court or judge may order him to be committed to prison, or the house of correction, for (not exceeding) one year, to be kept to hard labour, and to be publicly whipped by the common hangman, or by the master of such house of correction, at such times and places, and in such manner as the court shall think proper; or he may be transported for a term not exceeding seven years; and if he shall voluntarily escape, or break prison, or return from transportation before the time, he shall be guilty of felony without benefit of clergy, and

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the bailiff's immediately taking hold of him, without using words of arrest or shewing any warrant, *Pew* killed him, this was holden to be murder. *Pew's Case*, *Cro. Car.* 183.

(*a*) See stat. 5 G. 4. c. 18. § 6. *post*, tit. Constable.

shall be tried in the county where he escaped, or where he shall be apprehended.

§ 3. And if any person shall buy or receive any such wad, knowing the same to be unlawfully taken and carried away as aforesaid, he shall be guilty of felony, and be liable to all the penalties inflicted by the laws on persons knowingly buying or receiving stolen goods.

Blasphemy and Profaneness.

[3 J. c. 21. 1 W. sess. 1. c. 18. 9 & 10 W. c. 32. 22 G. 2. c. 33. 53 G. 3. c. 160.]

Blasphemy.

ALL blasphemies against God, as denying his being or providence; and all contumelious reproaches of Jesus Christ; all profane scoffing at the Holy Scriptures, or exposing any part of them to contempt or ridicule; impostures in religion, as falsely pretending to extraordinary commissions from God, and terrifying or abusing the people with false denunciations of judgments; and all open lewdness grossly scandalous—are punishable by fine and imprisonment, and also such corporal punishment, as to the court shall seem meet, according to the heinousness of the crime. 1 *Haw. c.* 5. § 6. 1 *East's P. C.* 3.

Depraving the established religion.

Also seditious words, in derogation of the established religion are indictable, as tending to a breach of the peace. 1 *Haw. c.* 5. § 6

3 J. c. 21. Representing the Deity in stage plays.

By stat. 3 *J.* 1. *c.* 21. If any person shall, in any stage play, interlude, show, may-game, or pageant, jestingly or profanely speak or use the holy name of God, or of Christ Jesus, or of the Holy Ghost, or of the Trinity, he shall forfeit 10*l.*; half to the king, and half to him that shall sue.

1 W. & M. c. 18. Denying the Trinity.

By stat. 1 *W. & M. c.* 18. No person shall have any benefit of the toleration act, who shall deny in his preaching or writing the doctrine of the blessed Trinity, as it is set forth in the thirty-nine articles.

9 & 10 W. c. 32. Christians depraving the Christian religion.

And by stat. 9 & 10 *W. c.* 32. If any person having been educated in, or at any time having made profession of the Christian religion in this realm, shall by writing, printing, teaching, or advised speaking, deny any one of the persons in the holy Trinity to be God; or shall assert or maintain there are more Gods than one; or shall deny the Christian religion to be true, or the Holy Scriptures to be of divine authority; and shall be convicted thereof, in any of the courts at *Westminster*, or at the assizes, on the oaths of two witnesses, he shall, for the first offence, be incapable to have any office, ecclesiastical, civil, or military (unless he shall renounce such opinion in the court where he was convicted within four months after such conviction); and for the second offence he shall be disabled to be plaintiff, guardian, executor, or administrator, to take any gift or legacy, or to bear any office, and shall be imprisoned for three years.

But no person shall be prosecuted for any words spoken unless the information be given to a justice of the peace, within four

days after the words spoken, and the prosecution of such offence be within three months after such information.

The *King* v. *Richard Carlile, M.* 60 *G.* 3. 3 *B. & A.* 161. The stat. 9 & 10 *W.* 3. *c.* 32. has not altered the common law, as to the offence of blasphemy, but only given a cumulative punishment. It is, therefore, still an offence at the common law to publish a blasphemous libel.

The *King* v. *Mary Carlile, M.* 60 *G.* 3. 3 *B. & A.* 167. It is not lawful to publish even a correct account of the proceedings in a court of justice, if such an account contain matter of a scandalous, blasphemous, or indecent nature.

53 G. 3. c. 160.

But by stat. 53 *G.* 3. *c.* 160. intituled "*An act to relieve persons who impugn the doctrine of the holy Trinity from certain penalties,*" reciting, that whereas in the nineteenth year of his present majesty an act was passed, intituled "An act for the further relief of protestant dissenting ministers and schoolmasters;" and it is expedient to enact as herein-after provided: it is enacted, "that so much of an act passed in the first year of the reign of king *William* and queen *Mary*, intituled 'An act for exempting H. M.'s protestant subjects dissenting from the church of *England* from the penalties of certain laws,' as provides that that act or any thing therein contained should not extend or be construed to extend to give any ease, benefit, or advantage to persons denying the Trinity as therein mentioned, be and the same is hereby repealed."

Act of William and Mary, respecting the denial of the Trinity, repealed.

By § 2. It is enacted, "that the provisions of another act passed in the ninth and tenth years of the reign of king *William*, intituled 'An act for the more effectual suppressing blasphemy and profaneness,' so far as the same relate to persons denying as therein mentioned respecting the holy Trinity, be repealed."

Provisions of 9 & 10 W. 3. in art repealed.

And two acts passed in the parliament of *Scotland*, the first in 1 *C.* 2. and the other in 1 *W.* intituled "Acts against the crime of blasphemy," which acts respectively ordain the punishment of death, are hereby repealed.

Acts passed in Scotland against blasphemy, repealed.

§ 4. This a public act.

An information was exhibited by the attorney general, against *Edmund Curl*, for printing and publishing two obscene books, the one styled *The Nun in her Smock;* the other, *The Art of Flogging;* setting out the several lewd passages, and concluding against the peace. And of this the defendant was found guilty. It was moved in arrest of judgment, that however the defendant may be punishable for this in the spiritual court, as an offence against good manners; yet it cannot be a libel, for which he is punishable in the temporal courts. But after long debate and consideration, the court at last gave it as their unanimous opinion, that this was an offence properly within their jurisdiction; they said, that religion is a part of the common law, and therefore whatever is an offence against that, is evidently an offence against the common law. And the defendant was set in the pillory. *M.* 1 *G.* 2. 2 *Stra.* 788. 1 *Barnard.* 29.

Curl's case. An obscene book is punishable as a libel.

R. v. *Woolston, E.* 2 *G.* 2. 2 *Stra.* 834. *Fitzgib.* 64. He was convicted on four informations, for his blasphemous discourses on the miracles of our Saviour. And attempting to move in arrest of judgment, the court declared they would not suffer it to be debated, whether to write against Christianity *in general* was not an offence

Woolston's case. To write against Christianity in general, is punishable at common law.

punishable in the temporal courts at common law: they desired it might be taken notice of, that they laid their stress upon the word *general*, and did not intend to include disputes between learned men upon particular controverted points. The next term he was brought up and fined 25*l.* for each of his four discourses, to suffer a year's imprisonment, and to enter into a recognizance for his good behaviour during his life, himself in 3000*l.* and 2000*l.* by others.

Waddington's case.

R. v. *Waddington. M.* 1822. 1 *B.* & *C.* 26. A publication stating our Saviour to be an impostor, and a murderer in principle, and a fanatic, is a libel at common law: for Christianity is a part of the law of the land.(*a*)

Semble, that the stat. 53 *G.* 3. *c.* 160. does not alter the common law, but only removes the penalties imposed by 9 & 10 *W.* 3. *c.* 32. on persons denying the Trinity, and extends to them the benefits conferred on all other protestant dissenters by stat. 1 *W.* & *M. c.* 18. § 1. (*a*)

Naylor's case.

In the year 1656, *James Naylor* for personating our Saviour, and suffering his followers to worship him, and pay him divine honours, was sentenced to be set in the pillory, and to have his tongue bored through with a red hot iron, and to be whipped, and stigmatized in the forehead with the letter B.

Annet's case.

R. v. *Annet*, 1 *Bla. R.* 395. The defendant was convicted on an information, for writing a most blasphemous libel in weekly papers, called the Free Inquirer; to which he pleaded guilty. In consideration of which, and of his poverty, of his having confessed his errors in an affidavit, and of his being seventy years of age, and some symptoms of wildness that appeared on his inspection in court, the court declared they had mitigated their intended sentence to the following, viz. To be imprisoned in Newgate for a month; to stand twice in the pillory with a paper on his forehead, inscribed blasphemy; to be sent to the house of correction, to hard labour, for a year; to pay a fine of 6*s.* 8*d.* and to find security, himself in 100*l.* and two sureties in 50*l.* each, for his good behaviour during life.

Navy.

By stat. 22 *G.* 2. *c.* 33. *art.* 2. All persons in or belonging to H. M.'s ships or vessels of war, being guilty of profane oaths, cursings, execrations, drunkenness, uncleanness, or other scandalous actions, in derogation of God's honour, and corruption of good manners, shall incur such punishment as a court-martial shall think fit to impose.

For Profane Cursing and Swearing. See **Swearing.**

Bodies (*Dead*), Stealing, &c.

TO deprive the dead of funeral rites, or to violate their sepulchral repose, has been held in abhorrence in all ages and countries. Though the man of enlightened understanding is as regardless of

(*a*) See *Burn's Eccl. Law*, 8th edit. Vol. III. tit. Profaneness, p. 215. n. (3.) and Vol. II. tit. Dissenters, *Tyrwhitt's* notes.

the disposal of his corpse, as the anatomist is professionally desirous to advance his practical knowledge of the human structure; the indifference of the former, and unanswerable arguments of the latter, are wholly insufficient to stem the general detestation of stealing dead bodies, even for scientific purposes. The public mangling of the remains of a beloved relation is of itself repugnant to every feeling of human nature; but how is that feeling outraged where that relation is a female, and the atrocity of her unnatural discerption is consummated by professional ribaldry? The philosopher, however regardless of his own worthless clay, shudders at the last dreary triumph of scientific pursuit, when achieved on the corpse of his friend or kinsman.

The following passage from the Tusculan Questions, is well quoted by Mr. *Christian* in his notes to 2 *Bla. C.* p. 429. *De humatione unum tenendum est, contemnendam in* nobis, *non negligendam in* nostris: *ita tamen mortuorum corpora nihil sentire intelligamus. Quantum autem consuetudini famæque dandum sit,* id curent vivi.

No civil action lies against such as violate or disturb the remains of the dead; nor is the stealing a corpse felony: for a corpse is *nullius in bonis*, (3 *Inst.* 203.) and thus the right of property requisite to support either proceeding is wanting. The stealing the grave clothes, coffin, &c. for the same reason, *is* felony; for the property thereof remains in the executor, or whoever was at the charge of the funeral. But the common law of *England* views the public indecency of taking up a dead body as a misdemeanor of the most flagrant nature. (*a*) In *Rex* v. *Lynn*, *M.* 1788, 2 *T. R.* 733. 2 *Leach. Cr. C.* 497. *S. C.*, it was determined that stealing dead bodies, though for the improvement of the science of anatomy, is an indictable offence as a misdemeanor, it being a practice contrary to common decency, and shocking to the general sentiments and feelings of mankind.

R. v. Lynn.

By stat. 25 *G.* 2. *c.* 37. § 2. The body of a murderer (where the conviction and execution is in *Middlesex* or *London*,) shall be conveyed by the sheriff to the Hall of the Surgeons' Co., and dissected by such surgeons or their appointee: and when such execution happens in any other county or place in *G. B.*, the body shall be delivered by the sheriff to such surgeon as the judge directs.

25 G. 2. c. 37. Body of murderer.

§ 10. Rescuing the body from the sheriff during conveyance to the surgeon, or from the house of the surgeon, is felony, punishable by seven years' transportation.

By stat. 32 *H.* 8. *c.* 4. § 2. the masters or governors of the commonalty of surgeons of *London* may yearly, at their pleasure, take four persons, put to death for felonies, and make dissection thereof for advancing the science of surgery.

32 H. 8. c. 4. Bodies of four felons in London.

A conspiracy to prevent a burial is indictable as a misdemeanor. *Young*'s case, 2 *T. R.* 734., and see *Huber. lib.* 2. *tit.* 2. *de Arrests personals*, 6., cited *Burn's E. L.* 8th *edit.* p. 259 *n.*

Preventing a burial.

So, to sell the dead body of a capital convict for dissection, where dissection is no part of the sentence, is a misdemeanor indictable at common law. *R.* v. *Cundick*, *Kingston Lent Ass.*

Selling body of convict for dissection.

(*a*) See on this subject 3 *Inst.* 110. 12 *Rep.* 113. 1 *Hale, P. C.* 515. 2 *Bla. C.* 429. 4 *Id.* 236. 2 *East's P. C.* 652.

Cundick's case.

1822, Cor. *Graham* B. 1 *D. & R. N. P. Rep.* 13. Indictment stated " That one *E. L.* was publicly executed at, &c., and that one *G. C.* of, &c., undertaker, *was retained and employed* by *W. W.* the keeper of the gaol in and for the said county, to bury the body of the said person so executed, *for certain reward to be therefore paid* to the said *G. C.*, by and on behalf of the said county, and in pursuance of the said *retainer and employment*, the body of the said person so executed was then and there delivered to the said *G. C.* for the purpose of being so by him buried as aforesaid, *and it then and there became the duty of the said G. C.* to bury the same accordingly, but that the said *G. C.* being, &c. and having no regard to his said duty, nor to, &c., *did not, nor would bury the said body*, but on the contrary thereof, unlawfully, &c., and for the sake of wicked lucre and gain, did take and carry away the said body, and did sell and dispose of the same, for the purpose of being dissected, &c., to the great scandal, &c.:" *Graham* B. held, that the indictment was well framed, though apparently drawn in the language of a declaration in assumpsit: Held also, that to support the indictment, it was not necessary there should be direct evidence that the defendant had sold the body for lucre and gain, and for the purpose of being dissected. – *Note.* The objections which occasioned the above decision, were not renewed when defendant was brought up for judgment.

Arresting a dead body.

A case was cited by *Hyde* C. J. in *Quick* v. *Copleton*, 1 *Levinz*, 161. 1 *Sid.* 242. 1 *Keb.* 866., that a woman who feared the dead body of her son would be arrested for debt, was holden liable on a promise to pay in consideration of forbearance, though she was neither executrix nor administratrix, and of which the other judges are said to have doubted, was thus forcibly repudiated by Lord *Ellenborough*, in *Jones* v. *Ashburnham*, 4 *East*, 460. and 465. " It is impossible to contend that this last forbearance could be a good consideration for an assumpsit: for to seize a dead body upon any such pretence would be *contra bonos mores*, and an extortion on the relatives. It is contrary to every principle of law and moral feeling. Such an act is revolting to humanity, and illegal; and therefore any promise extorted by the fear of it could never be valid in law. It might as well be said, that a promise in consideration that one would withdraw a pistol from another's breast, could be enforced against the party acting under such unlawful terror." See 1 *Burn's E. L.* 260. *Tyrwhitt*'s note.

Bodies (*Dead, human*), burial of, in certain cases. See *post*, tit. **Burial**.

Bonds, &c. (*Stealing, &c.*) See stat. 2 G. 2. c. 25. § 3. Vol. III. tit. **Larceny**, § 1.

——— (*Receiving, &c*). tit. **Accessary**, *ante*, p. 18.

Books.

[7 Ann. c. 14.]

BY stat. 7 Ann. c. 14. § 10. If any book shall be taken or otherwise lost out of any parochial library, any justice may grant his warrant to search for it; and if it shall be found, it shall by order of such justice be restored to the library.

7 Ann. c. 14.

Borders between England and Scotland. See **Northern Borders.**

Brandy. See Vol. II. tit. **Excise** (*Spirits*).

Brass. See Vol. I. tit. **Accessary.** Vol. III. tit. **Pewter.**

Bread.

I. *Baking Bread in London, or within Ten Miles of the Royal Exchange.*
[3 G. 4. c. cvi.]

II. *Baking Bread where an Assize is set.*
[31 G. 2. c. 29. — 13 G. 3. c. 62. — 36 G. 3. c. 22. — 38 G. 3. c. 62. — 39 & 40 G. 3. c. 74. — 41 G. 3. (U.K.) c. 12. — 50 G. 3. c. 73. — 53 G. 3. c. 116. — 3 G. 4. c. cvi. — 5 G. 4. c. 50.]

III. *Baking Bread where no Assize is set.*
[59 G. 3. c. 36. — 1 & 2 G. 4. c. 50.]

IV. *Of Standard Wheaten Bread.*
[13 G. 3. c. 62.]

§ I. Baking Bread in London, or within Ten Miles of the Royal Exchange.

BY stat. 3 *G.* 4. *c.* cvi. (*local*), after reciting stat. 55 *G.* 3. c. xcix. (*local*), 59 *G.* 3. *c.* cxxvii. (*local*), 60 *G.* c 3. .i. (*local*), and 1 *G.* 4. *c.* iv. (*local*), and that it is expedient that the said recited acts of the 59 & 60 *G.* 3., and of 1 *G.* 4. should be continued until 29th *Sept.* 1822; and that after the said 29th *Sept.* the said recited act of the 55 *G.* 3., and the several provisions therein contained, (except so much thereof as repeals any former act or acts) shall be altogether repealed; and that in lieu of the several provisions and penalties contained in that act, and in the said recited act of the 59 *G.* 3., the regulations, provisions, and penalties hereinafter contained shall be substituted: It is enacted, That the said recited acts of 59 & 60 *G.* 3. and 1 *G.* 4., and the several clauses and provisions therein contained, shall continue in

3 G. 4. c. cvi. (Local.)

Recited acts of 59 & 60 G. 3.

3 G. 4. c. cvi.

and 1 G. 4. continued to 29th Sept. 1822; and after that day, 55 G. 3. repealed.

force until the said 29th of *September* 1822; and that from and after the said 29th of *September*, the said recited act of the 55 *G.* 3., and all and every the provisions therein contained, (except so much thereof as repeals any former act or acts) shall be and the same are hereby repealed.

Bread made of the articles herein mentioned may be sold.

§ 2. It shall and may be lawful for the several bakers or sellers of bread within the city of *London* and the liberties thereof, within the weekly bills of mortality, and within 10 miles of the *Royal Exchange*, to make and sell, or offer for sale, in his, her, or their shop, or to deliver to his, her, or their customer or customers, bread made of flour, or meal of wheat, barley, rye, oats, buck wheat, Indian corn, peas, beans, rice, or potatoes, or any of them, and with any common salt, pure water, eggs, milk, barm, leaven, potatoe, or other yeast, and mixed in such proportions as they shall think fit, and with no other ingredient or matter whatsoever, subject to the regulations hereinafter contained.

Bakers to make bread of any weight or size.

§ 3. It shall and may be lawful for the several bakers or sellers of bread within the limits aforesaid, to make and sell, or offer for sale, in his, her, or their shop, or to deliver to his, her, or their customer or customers, bread made of such weight or size as such bakers or sellers of bread shall think fit; any law or usage to the contrary notwithstanding.

Bread to be sold by weight, and in no other manner, under penalty not exceeding 40*s*.

§ 4. From and after the commencement of this act, viz. 29th *Sept.* 1822, (see § 34. p. 399.) all bread sold within the limits aforesaid, shall be sold by the several bakers or sellers of bread respectively within the said limits by weight; and in case any baker or seller of bread within the limits aforesaid shall sell, or cause to be sold, bread in any other manner than by weight, then and in such case every such baker or seller of bread shall, for every such offence, forfeit any sum not exceeding 40*s*., which the magistrate or justice, before whom such offender or offenders shall be convicted, shall order and direct:

Not to extend to French or fancy bread, or rolls.

Provided always, that nothing in this act contained shall extend or be construed to extend to prevent or hinder any such baker or seller of bread from selling bread usually sold under the denomination of French or fancy bread, or rolls, without previously weighing the same.

Penalty not exceeding 5*l*. nor less than 40*s*. on bakers using any other weight than avoirdupoise weight.

§ 5. The several bakers or sellers of bread respectively within the said limits, in the sale of bread, shall use the avoirdupoise weight of 16 ounces to the pound, according to the standard in the exchequer, and the several gradations of the same for any less quantity than a pound; and in case any such baker or seller of bread shall at any time use any other than the avoirdupoise weight, and the several gradations of the same, he, she, or they shall, for every such offence, forfeit any sum not exceeding 5*l*., nor less than 40*s*., as the magistrate or justice before whom such conviction shall take place, shall from time to time order and adjudge.

The peck loaf and its subdivisions not to be made or sold during the next two years:

§ 6. It shall not be lawful for any baker or seller of bread within the limits aforesaid, during the space of two years from the commencement of this act, (29th *Sept.* 1822, § 34.) to make and sell, or offer for sale in his, her, or their shop, or to deliver to his, her, or their customer or customers, any loaf or loaves of the description or denomination of the peck, half peck, quarter of a peck, or half-quarter of a peck loaf or loaves, or any or either of them; and every such baker or seller of bread who shall at any time during the

said term, make, sell, or cause to be sold, or offer for sale, any loaf or loaves of bread of the description or denomination aforesaid, or either of them, shall for every such offence forfeit any sum not exceeding 10*l.*, nor less than 40*s.*, as the magistrate or justice before whom any such offender shall be convicted, shall order and direct.

3 G. 4. c. cvi.

Under penalty not exceeding 10*l.* nor less than 40*s.*

§ 7. In case any such baker or seller of bread shall at any time before the expiration of two years from the commencement of this act, sell or deliver in his, her, or their shop, house, or premises, any bread which shall not have been previously weighed in the presence of the party purchasing the same, whether required by the purchaser so to do or not, except as aforesaid, then and in every such case every such baker or seller of bread so offending, shall, upon conviction in manner hereinafter mentioned, forfeit for every such offence, any sum not exceeding the sum of 10*s.*, as the magistrate or justice before whom such conviction shall take place, shall from time to time order and adjudge.

Penalty not exceeding 10*s.* for selling bread not previously weighed.

§ 8. Every baker or seller of bread within the limits aforesaid, shall cause to be fixed in some conspicuous part of his, her, or their shop, on or near the counter, a beam and scales with proper weights, or other sufficient balance, in order that all bread there sold may from time to time be weighed in the presence of the purchaser or purchasers thereof, except as aforesaid; and in case any such baker or seller of bread shall neglect to fix such beam and scales, or other sufficient balance, in manner aforesaid, or to provide and keep for use proper beam and scales and proper weights or balance, or shall have or use any incorrect or false beam or scales or balance, or any false weight not being of the weight it purports to be, according to the standard in the exchequer, then and in every such case, he, she, or they shall, for every such false beam and scales and balance, or false weight, forfeit any sum not exceeding 5*l.*, which the magistrate or justice before whom such offender or offenders shall be convicted, shall order and direct.

Bakers to provide in their shops beams, scales, and weights, &c. and to weigh bread, &c.

Under a penalty not exceeding 5*l.*

§ 9. Every baker or seller of bread within the limits aforesaid, and every journeyman, servant, or other person employed by such baker or seller of bread, who shall convey or carry out bread for sale in any cart or other carriage, drawn by a horse, mule, or ass, shall be provided with, and shall constantly carry in such cart or other carriage, a correct beam and scales with proper weights, or other sufficient balance, in order that all bread sold by every such baker or seller of bread, or by his or her journeyman, servant, or other person, may from time to time be weighed in the presence of the purchaser or purchasers thereof, except as aforesaid; and in case any such baker or seller of bread, or his or her journeyman, servant, or other person, shall at any time carry out or deliver any bread, without being provided with such beam and scales with proper weights, or other sufficient balance, or whose weights shall be deficient in their due weight according to the standard in the exchequer, or shall at any time refuse to weigh any bread purchased of him, her, or them, or delivered by his, her, or their journeyman, servant, or other person, in the presence of the person or persons purchasing or receiving the same; then and in every such case, every such baker or seller of bread shall, for every such offence, forfeit any sum not exceeding 5*l.*, which the ma-

Bakers and sellers of bread and other persons delivering by cart, &c. to be provided with beams, scales, and weights, &c. for weighing bread

Under a penalty not exceeding 5*l.*

1 G. 4. c. cvi.

gistrate or justice before whom such offender or offenders shall be convicted, shall order and direct.

Bread not to be adulterated under a penalty not exceeding 10*l.* nor less than 5*l.*

§ 10. No baker or other person or persons who shall make bread for sale within the limits aforesaid, nor any journeyman or other servant of any such baker or other person, shall at any time or times, in the making of bread for sale within such limits, use any mixture or ingredient whatsoever in the making of such bread, other than and except as herein-before mentioned, on any account or under any colour or pretence whatsoever, upon pain that every such person, whether master or journeyman, servant or other person, who shall offend in the premises, and shall be convicted of any such offence, by the oath, or in case of a Quaker, by affirmation, of one or more credible witness or witnesses, or by his, her, or their own confession, shall for every such offence forfeit any sum not exceeding 10*l.*, nor less than 5*l.*, or in default thereof shall, by warrant under the hand and seal or hands and seals of the magistrate or magistrates, justice or justices, before whom such offender shall be convicted, be apprehended and committed to the house of correction, or some prison of the city, county, borough, or place where the offence shall have been committed, ort he offender or offenders shall be apprehended, there to remain for any time not exceeding six calendar months from the time of such commitment, unless the penalty shall be sooner paid, as any such magistrate or justice shall think fit and order; and it shall be lawful for the magistrate or justice before whom any such offender or offenders shall be convicted, to cause the offender's name, place of abode, and offence, to be published in some newspaper which shall be printed or published in or near the city of *London* or the liberty of *Westminster*, and to defray the expence of publishing the same out of the money to be forfeited as last mentioned, in case any shall be so forfeited, paid, or recovered.

Names of offenders to be published.

Corn, meal, or flour not to be adulterated, nor shall any flour of one sort of corn be sold as the flour of any other sort, on penalty not exceeding 20*l* nor less than 5*l.*

§ 11. If any person within the limits aforesaid, shall put into any corn, meal, or flour, which shall be ground, dressed, bolted, or manufactured for sale within such limits, either at the time of grinding, dressing, bolting, or manufacturing the same, or at any other time, any ingredient or mixture whatsoever, not being the real and genuine produce of the corn or grain which shall be so ground; or if any person shall, within the limits aforesaid, knowingly sell, or offer or expose for sale, either separately or mixed, any meal or flour of one sort of corn or grain, as the meal or flour of any other sort of corn or grain, or any ingredient whatsoever mixed with the meal or flour so sold or offered or exposed for sale; then and in every such case, every person so offending shall, upon conviction before any one or more magistrate or magistrates, justice or justices of the city, county, borough, or place where such offence shall have been committed, on the oath, or in case of a quaker, by affirmation, of one or more credible witness or witnesses, or by his, her, or their own confession, forfeit for every such offence, any sum not exceeding 20*l.*, nor less than 5*l.*, which such magistrate or justice before whom any such offender or offenders shall be convicted, shall think fit and order.

Bread made of mixed meal or flour, to be marked with a Roman M.

§ 12. Every person who shall make for sale, or sell or expose for sale, within the limits aforesaid, any bread, made wholly or partially of the meal or flour of any other sort of corn or grain than wheat, or of the meal or flour of any peas or beans, shall

cause all such bread to be marked with a large Roman M; and if any person shall at any time, within the limits aforesaid, make or sell, or expose for sale, any such bread without such mark as herein-before directed, then and in every such case, every person so offending shall, upon conviction in manner herein-after mentioned, forfeit for every pound weight of such bread, and so in proportion for any less quantity which shall be so made for sale, or sold, or exposed for sale, without being so marked as aforesaid, any sum not exceeding 10*s*., as the magistrate or justice before whom such conviction shall take place, shall from time to time order and adjudge.

3 G 4. c. cvi.

Penalty for neglect not exceeding 10s.

§ 13. It shall be lawful for any magistrate or justice of the peace, within the limits of their respective jurisdictions, and also for any peace officer or officers, authorised by warrant under the hand and seal or hands and seals of any such magistrate or justice (and which warrant any such magistrate or justice is hereby empowered to grant), at seasonable times in the day-time, to enter into any house, mill, shop, stall, bakehouse, boltinghouse, pastry warehouse, outhouse, or ground of or belonging to any miller, mealman, or baker, or other person who shall grind grain, or dress or bolt meal or flour, or make bread for reward or sale, within the limits aforesaid, and to search or examine whether any mixture or ingredient not the genuine produce of the grain such meal or flour shall import or ought to be, shall have been mixed up with or put into any meal or flour in the possession of such miller, mealman, or baker, either in the grinding of any grain at the mill, or in the dressing, bolting, or manufacturing thereof, whereby the purity of any meal or flour is or shall be in anywise adulterated; or whether any mixture or ingredient, other than is allowed by this act, shall have been mixed up with or put into any dough or bread in the possession of any such baker or other person, whereby any such dough or bread is or shall be in anywise adulterated; and also to search for any mixture or ingredient which may be intended to be used in or for any such adulteration or mixture; and if on any such search, it shall appear that any such meal, flour, dough, or bread, so found, shall have been so adulterated by the person in whose possession it shall then be, or any mixture or ingredient shall be found, which shall seem to have been deposited there in order to be used in the adulteration of meal, flour, or bread; then and in every such case, it shall be lawful for every such magistrate or justice of the peace, or officer or officers authorised as aforesaid respectively, within the limits of their respective jurisdictions, to seize and take any meal, flour, dough, or bread which shall be found in any such search, and deemed to have been adulterated, and all ingredients and mixtures which shall be found and deemed to have been used or intended to be used in or for any such adulteration as aforesaid; and such part thereof as shall be seized by any peace officer or officers authorised as aforesaid, shall, with all convenient speed after seizure, be carried to the nearest resident magistrate or justice of the peace, within the limits of whose jurisdiction the same shall have been so seized; and if any magistrate or justice who shall make any such seizure in pursuance of this act, or to whom any thing so seized under the authority of this act shall be brought, shall adjudge that any such meal, flour, dough, or bread

Magistrates or peace officers by their warrants, may search a baker's premises, and if any adulterated flour, bread, &c. be found, the same may be seized and disposed of.

3 G. 4. c. cvi.

so seized shall have been adulterated by any mixture or ingredient put therein, other than is allowed by this act, or shall adjudge that any ingredient or mixture so found as aforesaid shall have been deposited or kept where so found for the purpose of adulterating meal, flour, or bread; then and in any such case, every such magistrate or magistrates, justice or justices of the peace, is and are hereby required, within the limits of their respective jurisdictions, to dispose of the same as he or they, in his or their discretion, shall from time to time think proper.

Penalty on persons in whose house, shop, or other premises, ingredients for the adulteration of meal or bread shall be found:

§ 14. Every miller, mealman, or baker, within the limits aforesaid, in whose house, mill, shop, stall, bakehouse, boltinghouse, pastry warehouse, outhouse, ground, or possession, any ingredient or mixture shall be found, which shall, after due examination, be adjudged by any magistrate or justice of the peace, to have been deposited there for the purpose of being used in adulterating meal, flour, or bread, shall, on being convicted of any such offence, either by his, her or their own confession, or by the oath, or in the case of a quaker, by affirmation, of one or more credible witness or witnesses, forfeit on every such conviction, any sum of money not exceeding 10*l.* nor less than 40*s.* for the *first* offence; 5*l.* for the *second* offence, and 10*l.* for every subsequent offence; or in default of payment thereof, shall, by warrant under the hand and seal of the magistrate or justice before whom such offender shall be convicted, be apprehended and committed to the house of correction, or some prison of the city, county, or place where the offence shall have been committed, or the offender or offenders shall be apprehended, there to remain for any time not exceeding six calendar months from the time of such commitment, (unless the penalty be sooner paid) as any such magistrate or justice shall think fit and order; and it shall be lawful for the magistrate or justice before whom any such offender shall be convicted, to cause the offender's name, place of abode, and offence, to be published in some newspaper which shall be printed or published in or near the city of *London*, and to defray the expense of publishing the same out of the money to be forfeited as last mentioned, in case any shall be so forfeited, paid, or recovered.

First offence not exceeding 10*l.* nor less than 40*s.* Second offence 5*l.* and 10*l.* for every subsequent offence.

Names of offenders to be published.

Penalty not exceeding 10*l.* for obstructing any search authorised by this act.

§ 15. If any person or persons shall wilfully obstruct or hinder any such search as herein-before is authorised to be made, or the seizure of any meal, flour, dough, or bread, or of any ingredient or mixture which shall be found on any such search, and deemed to have been lodged with an intent to adulterate the purity or wholesomeness of any meal, flour, dough or bread, or shall wilfully oppose or resist any such search being made, or the carrying away any such ingredient or mixture as aforesaid, or any meal, flour, dough, or bread, which shall be seized as being adulterated, or as not being made pursuant to this act, he, she, or they so doing or offending in any of the cases last aforesaid, shall for every such offence, on being convicted thereof, forfeit such sum, not exceeding 10*l.*, as the magistrate or justice before whom such offender or offenders shall be convicted, shall think fit and order: Provided also, that if any person making or who shall make bread for sale within the limits aforesaid, shall at any time make complaint to any magistrate or justice of the peace, within his or their jurisdiction, and make appear to him or them, by the

Offences occasioned by the wilful default of journeymen

oath, or in the case of a quaker, by affirmation of any credible witness, that any offence which such person shall have been charged with, and for which he or she shall have incurred and paid any penalty under this act, shall have been occasioned by or through the wilful act, neglect, or default of any journeyman or other servant employed by or under such person so making complaint, then and in any such case, any such magistrate or justice may and is hereby required to issue out his warrant, under his hand and seal, for bringing any such journeyman or servant before any such magistrate or justice or any magistrate or justice of the peace acting in and for the city, county, division, or place where the offender can be found, and on any such journeyman or servant being thereupon apprehended and brought before any such magistrate or justice, he, within his jurisdiction, is hereby authorised and required to examine into the matter of such complaint, and on proof thereof upon oath or affirmation to the satisfaction of any such magistrate or justice of the peace who shall hear such complaint, then any such magistrate or justice is hereby directed and authorised, by any order under his hand to adjudge and order what reasonable sum of money shall be paid by any such journeyman or servant to his master or mistress, as or by way of recompence to him or her for the money he or she shall have paid by reason of the wilful act, neglect, or default, of any such journeyman or servant; and if any such journeyman or servant shall neglect or refuse, on his conviction, to make immediate payment of the sum of money which any such magistrate or justice shall order him to pay by reason of such his said wilful neglect or default, then any such magistrate or justice within his jurisdiction, is hereby authorised and required, by warrant under his hand and seal, to cause such journeyman or servant to be apprehended and committed to the house of correction, or some other prison of the city, county, division, or place, in which such journeyman or servant shall be apprehended or convicted, to be there kept to hard labour for any term not exceeding six calendar months from the time of such commitment, as to such magistrate or justice shall seem reasonable, unless payment shall be made of the money ordered after such commitment, and before the expiration of the said term of six months.

3 G. 4. c. cvi.

and servants, how to be punished.

§ 16. No master, mistress, journeyman, or other person respectively exercised or employed in the trade or calling of a baker within the limits aforesaid, shall, on the Lord's day, or on any part thereof, make or bake any bread, rolls, or cakes of any sort or kind; or shall, on any other part of the said day than between the hours of *nine* of the clock in the forenoon and *one* of the clock in the afternoon, on any pretence whatsoever, sell or expose to sale, or permit or suffer to be sold or exposed to sale, any bread, rolls, or cakes, of any sort or kind; or bake or deliver, or permit or suffer to be baked or delivered, any meat, pudding, pie, tart, or victuals, except as hereinafter is excepted, or in any other manner exercise the trade or calling of a baker, or be engaged or employed in the business or occupation thereof, save and except so far as may be necessary in setting and superintending the sponge to prepare the bread or dough for the following day's baking; and every person offending against the last-mentioned regulations, or any one or more of them, or making any sale or delivery hereby allowed, otherwise than within the

Bakers shall not bake bread or rolls on the Lord's day; nor sell bread, nor bake bread, pies, &c. except between certain hours.

3 G.4. c. cvi.

bakehouse or shop, and being thereof convicted before any justice of the peace of the city, county, or place where the offence shall be committed, *within six days from the commission thereof*, either upon the view of such justice or on confession by the party, or proof by one or more credible witness or witnesses upon oath or affirmation, shall for every such offence pay and undergo the forfeiture, penalty, and punishment hereinafter mentioned; (that is to say), for the *first* offence the penalty of 10*s.*; for the *second* offence the penalty of 20*s.*; and for the *third*, and every subsequent offence respectively the penalty of 40*s.*; and shall moreover, upon every such conviction, bear and pay the costs and expenses of the prosecution, such costs and expenses to be assessed, settled, and ascertained by the justice convicting, and the amount thereof, together with such part of the penalty as such justice shall think proper to be allowed to the prosecutor or prosecutors for loss of time in instituting and following up the prosecution, at a rate not exceeding 3*s.* *per* diem, and to be paid to the prosecutor or prosecutors for his, her, and their own use and benefit, and the residue of such penalty to be paid to such justice, and *within seven days* after his receipt thereof to be transmitted by him to the churchwardens or overseers of the parish or parishes where the offence shall be committed, to be applied for the benefit of the poor thereof; and in case the whole amount of the penalty, and of the costs and expenses aforesaid, be not forthwith paid after conviction of the offender or offenders, such justice shall and may, by warrant under his hand and seal, direct the same to be raised and levied by distress and sale of the goods and chattels of the offender or offenders; and in default or insufficiency of such distress, commit the offender or offenders to the house of correction, on a *first* offence for the space of seven days, for a *second* offence for the space of fourteen days, and on a *third* or any subsequent offence for the space of one month, unless the whole of the penalty, costs, and expenses be sooner paid and discharged: Provided nevertheless, that it shall be lawful for every master or mistress baker, residing within the limits aforesaid, to deliver to his or her customers, on the Lord's day, any bakings until *half an hour past one of the clock* in the afternoon of that day, without incurring or being liable to any of the penalties in this act contained.

Penalty for the first offence 10*s.*; for the second offence 20*s.*; and for every subsequent offence 40*s.*

To be levied by distress.

Bakings may be delivered till half past one on Sundays.

§ 17. "No person who shall follow or be concerned in the business of a miller, mealman, or baker, shall be capable of acting or shall be allowed to act as a justice of the peace under this act, or in putting in execution any of the powers in or by this act granted; and if any miller, mealman, or baker shall presume so to do, he or they so offending in the premises shall, for every such offence, forfeit and pay the sum of 100*l.*, to any person or persons who will inform or sue for the same, to be recovered together with full costs of suit, in any of his majesty's courts of record at *Westminster*, by action of debt, bill, plaint, or information, wherein no essoign, wager of law, or more than one imparlance, shall be allowed."

No miller, mealman, or baker, to act as a justice of peace, in of this act, on penalty of 100*l.*

§ 18. In case any person or persons shall resist or make forcible opposition against any person or persons employed in the due execution of this act, every such person offending therein

Penalty not exceeding 10*l.* on persons oppos-

shall for every such offence forfeit any sum not exceeding 10*l*., at the discretion of the magistrate or justice of the peace, before whom he or she shall be convicted of such offence.

3 G. 4. c. cvi.

ing the execution of this act.

Recovery and application of penalties and forfeitures.

§ 19. " All penalties, forfeitures, and fines by this act inflicted or authorised to be imposed, (the manner of levying and recovering and applying whereof is not herein otherwise directed), shall upon proof and conviction of the offences respectively before any magistrate or justice of the peace for the city, county, or place where the offence shall have been committed (as the case may require), either by the confession of the party offending, or by the oath (or in case of a quaker on affirmation) of any credible witness or witnessess, (which oath or affirmation every such magistrate or justice is in every such case hereby fully authorised to administer), be levied, together with the costs attending the information and conviction, by distress and sale of the goods and chattels of the party or parties offending, by warrant under the hand and seal of such magistrate or justice (which warrant such magistrate or justice is hereby empowered and required to grant); and the overplus, (if any) after such penalties, forfeitures, and fines, and the charges of such distress and sale, are deducted, shall be returned upon demand unto the owner or owners of such goods and chattels; and in case such fines, penalties, and forfeitures shall not be forthwith paid upon conviction, then it shall be lawful for such magistrate or justice to order the offender or offenders so convicted to be detained and kept in safe custody, until return can be conveniently made to such warrant of distress, unless the offender or offenders shall give sufficient security to the satisfaction of such magistrate or justice, for his or their appearance before such magistrate or justice on such day or days as shall be appointed for the return of such warrant of distress, such day or days not being more than *seven* days from the time of taking any such security, and which security the said magistrate or justice is hereby empowered to take by way of recognizance or otherwise; but if upon the return of such warrant it shall appear that no sufficient distress can be had thereupon, then it shall be lawful for any such magistrate or justice of the peace as aforesaid, and he is hereby authorised and required, by warrant or warrants under his hand and seal, to cause such offender or offenders to be committed to the common gaol or house of correction of the city, county, or place where the offender shall be or reside, there to remain without bail or mainprize for any time not exceeding one calendar month, (save and except as herein otherwise directed), unless such penalties, forfeitures, and fines, and all reasonable charges attending the same, shall be sooner paid and satisfied; and the monies arising by such penalties, forfeitures, and fines respectively, when paid or levied, if not otherwise directed to be applied by this act, shall be from time to time paid, one moiety thereof to the informer or person suing for and recovering the same, and the other moiety to the churchwardens or overseers of the poor of the parish or place in which such offence shall have been committed, to be by them applied and disposed for the benefit of the poor thereof."

Summonses to be served on offenders to be in the following form.

§ 20. " Every summons to be served on every offender against any of the provisions of this act, shall be in the form or to the effect following:

3 G. 4. c. cvi.

To *A. B.* of ———.

County of ——— to wit. } *WHEREAS complaint and information hath been made before me,* C. D. *one of his majesty's justices of the peace or magistrate for the said* [*county, &c.*] *by* E. F. *of* ———, *that,* &c. [here state the nature and circumstances of the case, as far as it shall be necessary to shew the offence, and to bring it within the authority of the justice or magistrate, and in doing that follow the words of the act as near as may be]: *these are therefore to require you personally to appear before me* [or. *such other justice or magistrate, as shall be then and there present*] *at* ——— *in the said* [*county, &c.*] *on the* ——— *day of* ——— *next, at the hour of* ——— *in the* ——— *noon, to answer to the said complaint and information made by the said* E. F., *who is likewise directed to be then and there present, to make good the same. Herein fail not. Given under my hand this* ——— *day of* ———.

Informations for offences to be in the following form.

§ 21. "Every information to be laid before any justice or magistrate for any offence against this act shall be in the form or to the effect following:

County of ——— to wit. { *BE it remembered, that on the* ——— *day of* ———, A. B. *of* ——— *in the said county, informeth me,* ———, *one of his majesty's justices of the peace* [or, *magistrate,* as the case may be,] *for the said county, that* ——— *of* ———, *in the said county* [here describe the offence, with the time and place, and follow the words of the act as near as may be], *contrary to the statute made in the third year of the reign of king* George *the fourth, intituled* An act to repeal the acts now in force relating to bread to be sold in the city of *London* and the liberties thereof, and within the weekly bills of mortality and ten miles of the *Royal Exchange;* and to provide other regulations for the making and sale of bread, and preventing the adulteration of meal, flour, and bread within the limits aforesaid, *which hath imposed a forfeiture of* ——— *for the said offence. Taken the* ——— *day of* ———, *before me.*

A. B."

Informations to be laid before the acting magistrate of the district.

§ 22. All offences committed against this act shall be laid before the magistrate or magistrates, justice or justices, usually acting in and for the district in which the offence shall have been committed, in a summary way upon complaint, and the said magistrate or magistrates, justice or justices, is and are hereby empowered to issue his or their summons for the purpose of hearing and determining the same.

Power to summon witnesses in prosecuting offences.

§ 23. If it shall be made appear by the oath or affirmation of any credible person or persons, to the satisfaction of any magistrate or justice, that any person or persons within the jurisdiction of any such magistrate or justice, is or are likely to give or offer material evidence on behalf of the prosecutor of any offender or offenders against the true intent and meaning of this act, or on behalf of the person or persons accused, and will not voluntarily appear before such magistrate or justice, to be examined and give his, her, or their evidence concerning the premises, every such

magistrate or justice is hereby authorised and required to issue his summons to convene every such person or persons before any such magistrate or justice at such seasonable time as in such summons shall be fixed; and if any person so summoned, after having been paid or tendered a reasonable sum for his, her, or their costs and expenses, shall neglect or refuse to appear at the time by such summons appointed, and no just excuse shall be offered for such neglect or refusal, then (after proof upon oath or affirmation of such summons having been duly served upon the party or parties so summoned) every such magistrate and justice is hereby authorised and required to issue his warrant, under his hand and seal, to bring every such person or persons before any such magistrate or justice; and on the appearance of any such person before any such magistrate or justice, every such magistrate or justice is hereby authorised and empowered to examine, upon oath or affirmation, every such person; and if any such person, on his or her appearance, or on being brought before any such magistrate or justice, shall refuse to be examined upon oath or affirmation concerning the premises, without offering any just excuse for such refusal, any such magistrate or justice, within the limits of his jurisdiction, may, by warrant under his hand and seal, commit any person or persons so refusing to be examined, to the public prison of the city, county, division, liberty or place, in which the person or persons so refusing to be examined shall be, there to remain for any time not exceeding fourteen days, as any such magistrate or justice shall direct.

Punishment for giving false evidence.

§ 24. "If any person who shall take any oath or make any affirmation by this act directed to be taken or made, shall wilfully forswear himself or herself, or make any false affirmation, every such person shall be subject and liable to be prosecuted for perjury, by indictment or information, according to due course of law; and if convicted thereof, shall be subject and liable to the pains and penalties which persons convicted of wilful and corrupt perjury are subject and liable to.

Form of conviction.

§ 25. "The magistrate or magistrates, justice or justices, before whom any person shall be convicted in manner prescribed by this act, shall cause every such conviction to be drawn up in the form or to the effect following; (that is to say),

———, to wit. } *BE it remembered, that on this* ——— *day of* ———, *in the* ——— *year of the reign of* ———, A. B. *is convicted before* ——— *majesty's justices of the peace for the said county of* ———, [or, *for the* ——— *division of the said county of* ———, or, *for the city, liberty, or town of* ———, [as the case shall happen to be] ——— *for* ——— *and* ———, *do adjudge him* [or *her* or *them*, as the case may be] *to pay and forfeit for the same the sum of* ———. *Given under* ———, *the day and year aforesaid.*"

Proceedings not to be quashed for want of form.

§ 26. "No order, judgment, or conviction made touching or concerning any of the matters in this act contained, or of any proceedings to be had touching the conviction of any offender or offenders against this act, shall be quashed for want of form, or be removed or removable by *certiorari*, or any other writ or process whatsoever, into any of H. M.'s courts of record at *Westminster*; and where any distress shall be made for any sum or

3 G. 4. c. cvi.

sums of money to be levied by virtue of this act, the distress itself shall not be deemed unlawful, nor the party or parties making the same be deemed a trespasser or trespassers, on account of any defect or want of form in the summons, conviction, warrant of distress, or any other proceeding relating thereto; nor shall the party or parties distraining be deemed a trespasser or trespassers *ab initio* on account of any irregularity which shall be afterwards committed by the party or parties distraining; but the person or persons aggrieved by such irregularity shall and may recover full satisfaction for the special damage, if any, in an action on the case; but no plaintiff or plaintiffs shall recover in any action for such irregularity as aforesaid, if tender of sufficient amends hath been made by or on behalf of the party distraining before such action brought."

Appeal allowed on entering into recognizance.

§ 27. If any person or persons convicted of any offence punishable by this act, shall think him, her, or themselves aggrieved by the judgment of the magistrate or justice, before whom he, she, or they shall have been convicted, it shall be lawful for such person or persons from time to time to appeal to the justices at the next general or general quarter sessions of the peace which shall be held for the city, county, division, liberty, town, or place where such judgment shall have been given; and the execution of such judgment shall in such case be suspended, the person or persons so convicted entering into a recognizance within 24 hours of the time of such conviction, with two sufficient sureties, in double the sum which such person or persons shall have been adjudged to pay or forfeit, upon condition to prosecute such appeal with effect, and to be forthcoming to abide the judgment and determination of the justices at their said next general or general quarter sessions; which recognizance the magistrate or justice, before whom such conviction shall be had, is hereby empowered and required to take; and the justices in the said general or general quarter sessions are hereby authorised and required to hear and finally determine the matter of every such appeal, and to award such costs as to them shall appear just and reasonable to be paid by either party; and if upon hearing the said appeal the judgment of the magistrate or justice before whom the appellant or appellants shall have been convicted shall be confirmed, such appellant or appellants shall forthwith pay down the sum he, she, or they shall have been adjudged to have forfeited, together with such costs as the said justices in their said general or general quarter sessions shall award to be paid to the prosecutor or informer, for defraying the expenses sustained by reason of any such appeal; and in default of the appellant's paying the same, any two justices, or any one magistrate or justice of the peace having jurisdiction in the place into which any such appellant or appellants shall escape, or where he, she, or they shall reside, shall and may, by warrant under their hands and seals, or his hand and seal, commit any such appellant or appellants to the common gaol of the city, county, division, or place where he, she, or they shall be apprehended, until he, she, or they shall make payment of such penalty, and of the costs and charges which shall be adjudged on the conviction; but if the appellant or appellants in any such appeal shall make good his, her, or their appeal, and be discharged of the said conviction, reasonable costs shall be

Costs.

awarded to the appellant or appellants against any such informer or informers who would (in case of such conviction) have been entitled to a moiety of the penalty to have been recovered as aforesaid; and which costs shall and may be recovered by the appellant or appellants against any such informer or informers, in like manner as costs given at any general or general quarter sessions are recoverable: provided always, that no person shall be detained in prison for any such offence, for any greater length of time than three calendar months.

3 G. 4. c. cvi.

§ 28. "If any such conviction shall happen to be made within six days before any general or general quarter sessions of the peace shall be held for the city, county, division, town corporate, borough, or place where such conviction shall have been made, the party or parties who shall think him, her, or themselves aggrieved by any such conviction, shall and may, on entering into a recognizance in manner and for the purposes before directed, be at liberty to appeal either to the then next or next following general or general quarter sessions of the peace which shall be held for any such county, division, city, town corporate, borough, liberty, or place, where any such conviction shall have been made."

Where conviction shall be had within six days of quarter sessions, the parties shall be allowed to appeal to the next or next following quarter sessions.

§ 29. Every action or suit which shall be brought or commenced against any magistrate or justice, or any peace officer or officers, for any matter or thing done or committed by virtue of or under this act, shall be *commenced within six calendar months* next after the fact committed, and not afterwards, and shall be laid or brought in the city, county, or place where the matter in dispute shall arise, and not elsewhere; and the stat. 24 G. 2. *c.* 44. so far as the said act relates to the rendering the justices more safe in the execution of their office, shall extend and be construed to extend to the magistrate and magistrates, justice and justices of the peace acting under the authority or in pursuance of this act; and no action or suit shall be had or commenced against, nor shall any writ be sued out, or copy of any writ be served upon any peace officer or officers, for any thing done in the execution of this act, until seven days after a notice in writing shall have been given to or left for him or them at his or their usual place of abode by the attorney for the party intending to commence such action, which notice in writing shall contain the name and place of abode of the person intending to bring such action and also of his attorney, and likewise the cause of action or complaint; and any peace officer or officers shall be at liberty and may, by virtue of this act, at any time, within seven days after any such notice shall have been given to or left for him, tender or cause to be tendered any sum or sums of money as amends for the injury complained of, to the party complaining, or to the attorney named in such notice; and if the same be not accepted, the defendant or defendants in any such action or actions may plead such tender in bar of such action or actions, together with the general issue or any other plea, with leave of the court in which the action shall be commenced; and if upon issue joined on such tender the jury shall find the amends tendered to have been sufficient, they shall find a verdict for the defendant or defendants; and in every such case, or if the plaintiff shall become nonsuit, or discontinue

Limitation of actions.

24 G. 2. c. 44. extended to this act.

3 G.4. c. cvi.

his action, or if judgment shall be given for the defendant or defendants upon demurrer, or if any action or suit shall be brought after the time limited by this act for bringing the same, or shall be brought in any other county or place than as aforesaid, then and in every such case the jury shall find a verdict for the defendant or defendants, and the defendant or defendants shall be entitled to his or their costs; but if the jury shall find that no such tender was made, or that the amends tendered were not sufficient, or shall find against the defendant or defendants on any plea or pleas by him or them pleaded, they shall then give a verdict for the plaintiff, and such damages as they shall think proper, and the plaintiff shall thereupon recover his costs against every such defendant or defendants.

General issue may be pleaded.

§ 30. If any action or suit shall be commenced against any other person or persons than a magistrate, justice, or peace officer, for any thing done in pursuance of this act, the defendant in any such action or suit may plead the general issue, and give this act and the special matter in evidence at any trial to be had thereupon, and that the same was done in pursuance and by the authority of this act; and if it shall appear so to have been done, or if a verdict shall be recorded for the defendant, or if the plaintiff shall be nonsuited, or discontinue his or her action after the defendant shall have appeared, or if judgment shall be given upon a verdict or demurrer against the plaintiff, the defendant in every such action shall and may recover treble costs, and have the like remedy for the same as any defendant hath or have in other cases by law for the recovery of his, her, or their costs.

Treble costs.

Limiting time of information.

§ 31. "No person shall be convicted of any offence under this act, unless the complaint is made within 48 hours after the offence shall have been committed, except in cases of perjury; and no person who shall be prosecuted to conviction for any offence done or committed against this act, shall be liable to be prosecuted for the same offence under any other law."

Application of penalties.

§ 32. "All penalties and forfeitures by this act inflicted, and the application of which is not herein-before directed, shall, when recovered or paid, go and be disposed of in manner following; (that is to say) one moiety thereof, where any offender or offenders shall be convicted, either by his, her, or their confession, or by the oath or affirmation of one or more credible witness or witnesses, shall go and be paid to the person or persons who shall inform against and prosecute to conviction any such offender or offenders; and the other moiety thereof, or in case there be no such person informing, then the whole thereof shall go and be paid to the churchwardens and overseers of the poor of the parish or parishes, for the use of the poor in the parish wherein such offence shall be committed, in such manner as such churchwardens and overseers of the poor shall in their discretion think fit."

Saving rights to the cities of London and Westminster, &c.

§ 33. "This act, or any thing herein contained, shall not extend or be construed to extend in any way to affect, lessen, or infringe upon the rights and privileges of the city of *London*, or of the worshipful company of bakers of the said city, or of the wardmote inquests of the said city, or of the city or liberties of *Westminster*, or borough of *Southwark;* or any right or custom of any lord or lords of any leets, or the rights of any clerk or clerks of the market in any place, which may be exercised and enjoyed

by them or any of them, by virtue of any charters, bye laws, prescriptions, usages, customs, privileges, grants, or acts of parliament; but all such rights and privileges shall be held, exercised, and enjoyed by the parties respectively entitled thereto, as fully and amply, to all intents and purposes, as the same were held, exercised, and enjoyed before the passing of this act."

3 G.4. c. cvi.

§ 34. Commencement of the act 29th *September*, 1822.

Commencement of this act.

§ 35. "This act shall be deemed to be a public act."

Public act.

II. Baking Bread where an Assize is set.

By stat. 50 *G.* 3. *c.* 73. Several new regulations were enacted relating to *the baking of bread.*

50 G.3. c.73. Baking of bread beyond London, and ten miles from thence.

By § 1. It is enacted, that if any person residing *beyond the city of London* or the liberties thereof, or beyond ten miles of the *Royal Exchange*, shall make any bread for sale, or shall send out or expose to or for sale any bread which shall be deficient in weight, *according to the assize* which shall be set for any such bread from time to time to be sold at, in pursuance of any act or acts, then in force, for regulating the price and assize of bread, it shall be lawful for any magistrate or justice of the peace within the limits of their respective jurisdictions, before whom any information shall be given upon the oath of one witness of any such deficiency in weight, and also for any peace officer, authorised by warrant under the hand and seal of any such magistrate or justice, at seasonable times in the day-time to enter into any house, shop, stall, bakehouse, warehouse, or outhouse of or belonging to any such baker or seller of bread, against whom such information shall have been made as aforesaid, to search for, view, weigh, and try all such bread as shall be then and there found, and shall have been baked within twenty-four hours next preceding the time of the same having been so weighed, and which bread shall be weighed by the bushel, or in any larger or smaller quantity, as may be found most convenient; and if on the weighing of such bread any deficiency shall be found in its due weight on the average of the whole weight of all such bread as shall be then and there found, and which shall have been baked within twenty-four hours as aforesaid, and which deficiency shall be proved before such magistrate or justice, upon the oath of the party weighing the same, then he so offending in the premises, and being thereof convicted, shall forfeit not exceeding 5*s.* for every ounce of bread which shall be found deficient in weight on the average of all such bread as shall have been so weighed, and so in proportion for every deficiency of weight less than an ounce, as any such magistrate or justice before whom any such deficiency shall be so proved shall think fit to order, except as hereafter is excepted; and any such magistrate, justice, or peace officer, within the limits of their respective jurisdictions, may, in such case, where there is a deficiency on the average as aforesaid, seize all such loaves as shall be so found deficient; and any such magistrate or justice may dispose thereof as he in his discretion shall think fit, except it shall be proved, by or on the behalf of the parties against whom such information shall be made by the oath (or affirmation, being a *Quaker*,) of any one or more respectable housekeeper, that such deficiency wholly arose from some unavoidable

Penalty on bakers for selling bread short of weight, to be weighed within twenty-four hours after baking.

50 G.3. c.73.

accident in baking or otherwise, or was occasioned by or through some contrivance or confederacy.

Bakers to have weights and scales in their shops.

And by § 2. Every baker and seller of bread beyond the said city of *London* and the liberties thereof, and beyond the said ten miles of the *Royal Exchange*, shall have fixed in some convenient place of his shop, a beam and scales with proper weights of the assize weight of a half-peck loaf, a quartern loaf, and a half-quartern loaf; and also of an eighteen penny, one shilling, sixpenny, and three-penny loaf; and any person who may purchase any such loaf of bread from any such baker or seller of bread, may, if he shall think proper, require the same to be weighed in his presence; and if any such loaf shall be found deficient in weight, then the person demanding the same to be so weighed shall have the deficiency made up with other bread or another loaf given in lieu thereof, as may be required by such person; and any such baker or seller as aforesaid, who shall neglect to fix such beam and scales, or to provide and keep for use proper weights, or whose weights shall be deficient in their due weight, or who shall refuse to weigh any half-peck loaf, quartern loaf or half-quartern loaf or loaves purchased in his shop, in presence of the party requiring the same, and shall be thereof convicted, either by the oath of one witness, or his own confession, shall for every such offence forfeit not exceeding 10*s*. as the magistrate or justice, before whom such offender shall be convicted, shall think fit.

Limitation as to baking on Sundays.

By § 3. No person exercising or employed in the trade or calling of a baker, beyond the said city of *London* or the liberties thereof, or beyond the said ten miles of the *Royal Exchange*, shall on the Lord's day, commonly called *Sunday*, or any part thereof, make or bake any household or other bread, rolls, or cakes of any sort or kind, or shall on any part of the said day, excepting between ten in the forenoon and half-past one in the afternoon, on any pretence whatsoever, sell or expose to sale, or permit or suffer to be sold or exposed to sale, any bread, rolls, or cakes of any sort or kind, or bake or deliver, or permit or suffer to be baked or delivered, any meat, pudding, pie, tart, or victuals, at any time after half-past one of the clock in the afternoon of that day, or in any other manner exercise the trade or calling of a baker, or be engaged or employed in the business or occupation thereof, save and except so far as may be necessary in setting and superintending the sponge to prepare the bread or dough for the following day's baking; and no meat, pudding, pie, tart, or victuals shall be brought to or taken from any bakehouse during the time of divine service in the church of the parish, hamlet, or place where the same is situate, nor within one quarter of an hour of the time of commencement thereof; and every person offending against any one or more of the foregoing regulations, or making any sale or delivery hereby allowed between the hours aforesaid, otherwise than within the bakehouse or shop, and being thereof convicted before any justice of the county, city, or place where the offence shall be committed, within two days from the commission thereof, either upon the view of such justice, or on confession, or proof by one witness, shall for every such offence forfeit, for the first offence not exceeding 5*s*., for the second offence not exceeding 10*s*., and for the third and every subsequent offence respectively not exceeding 15*s*.; and shall moreover on conviction pay the costs

First offence. Second offence. Third offence.

and expenses of the prosecution, to be assessed by the justice convicting; and the amount thereof, together with such part of the penalty as such justice shall think proper, to be allowed to the prosecutor for loss of time in instituting and following up the prosecution, at a rate not exceeding 3*s*. *per diem*, shall be paid to the prosecutor for his use, and the residue of such penalty shall be paid to such justice, and within seven days after his receipt thereof be transmitted by him to the churchwardens or overseers of the parish where the offence shall be committed, to be applied for the benefit of the poor thereof; and in case the whole amount of the penalty, and of the costs and expenses as aforesaid, be not paid within three days after conviction, such justice shall, by warrant under his hand and seal, direct the same to be levied and raised by distress and sale, and in default or insufficiency of such distress, commit the offender to the house of correction on a first offence for any time not exceeding seven days, on the second offence for any time not exceeding fourteen days, and on the third or any subsequent offence for any time not exceeding twenty-one days, unless the whole of the penalty, costs, and expenses be sooner paid.

50 G. 3. c.73.

§ 4. Saves the right of the universities: and by § 5. the powers and penalties of former acts not hereby altered shall extend to this act.

By 31 G.2. c.29. former acts relative to assize of bread, repealed.

Stat. 31 *G*. 2. *c*. 29. repeals all the former laws relating to the assize of bread, and re-enacts the same, with additions and amendments. Which, throughout the whole, is a very regular and judicious act: so that the author had nothing more to do than to abridge the same in the order as it stands; not being able, in point of method, to alter it for the better.

Power to set the assize.

§ 2. To the intent that a plain and constant rule and method may be duly observed, in making and assizing of the several sorts of bread which shall be made for sale, in any place where an assize shall be thought proper to be set; it is enacted, that it shall be lawful for the court, or for the person or persons herein authorised to set the assize of bread, to set, ascertain, and appoint, in any place within their jurisdiction, the assize and weight of all sorts of bread which shall be made for sale, or exposed to sale, and the price to be paid for the same, when and as often as they shall think proper; and therein respect shall be had to the price which the grain, meal, or flour, shall bear, in the market or markets in or near the places for which such assize shall be set; and making reasonable allowance to the bakers for their charges, labour, and profit, as they shall deem proper.

In proportion to the price of corn. Allowance to the bakers.

Penalty of disobeying the assize.

§ 3. Where an assize of bread shall be thought proper to be set for any place, no person shall there make for sale, or sell, or expose to or for sale, any sort of bread, except wheaten and household (otherwise brown) bread, and such other sorts of bread as shall be allowed in the assize: but where it hath been usual to make, or the person setting the assize shall allow the making of bread, with the meal or flour of rye, barley, oats, beans, or pease, or of any such different sorts of grain mixed together; the same may be there made and sold accordingly: and if any person shall offend in the premises, and be convicted thereof by confession or oath of one witness, before any magistrate or justice within the

31 G. 2. c. 29. limits of their jurisdiction; he shall forfeit not exceeding 40*s.* nor less than 20*s.*

38 G. 3. c. 62. Allowance in the assize for the additional duty on salt.

And by 38 *G.* 3. *c.* 62. after reciting, that the price of salt is materially increased by 38 *G.* 3. *c.* 48.; it is enacted, that when the magistrate shall set the assize of bread, they shall immediately before setting such assize, add to what shall appear the average price *per* quarter of wheat fit for making of wheaten bread 5*d.* on account of the additional duty on salt, so as to increase such average price of 5*d. per* quarter, and shall then, in setting the assize of bread, make use of such increased average price in all respects as if the same were the real average price of wheat, so long as such additional salt duty shall continue.

31 G. 2. c. 29. Tables of assize. Sed vide 53 G 3. c. 116. post.

And in every place where an assize shall be thought proper to be set, the assize and weight of the several sorts of bread which shall be there made, shall be set according to the following tables:

[*Note.*—Here, in stat. 31 *G.* 2. *c.* 29. § 4. follow the tables: but since that statute there has been another made, *viz.* 53 *G.* 3. *c.* 116. regulating the mode of setting an assize, in places beyond *London*, and ten miles from the *Royal Exchange:* by § 7. of which latter act, in the place of the tables of stat. 31 *G.* 2. *c.* 29. are substituted others, which are inserted *post.*]

Assize to be set in avoirdupois weight.

§ 5. Every assize which shall be set, in any city, town corporate, hundred, division, liberty, rape, or wapentake, shall be always set in avoirdupois weight, and not troy weight; and in the proportions directed by the said tables, or as near as may be; and the said tables shall extend as well to such bread which shall be made of the flour of wheat mixed with the flour of other grain, as also to bread which shall be made with the flour of other grain than wheat, which shall be publicly allowed in any place to be made into bread; and the assize of all such mixed bread shall be set as near as may be according to the said tables.

Prices of grain how to be certified in cities and towns corporate.

§ 7. The court of mayor and aldermen of every city (except the city of *London*) where there shall be any such court, and when such court shall sit; and where there shall be no such court, or being any such, when the same shall not sit, the mayor, bailiffs, or other chief magistrate or magistrates of every such other respective city; and in towns corporate, or boroughs, the mayor, bailiffs, aldermen, or other chief magistrate or magistrates of every such town corporate or borough; or two justices in such towns or places where there shall be no such mayor, bailiffs, aldermen, or chief magistrates; shall and may, from time to time as there shall be occasion, cause the respective prices which the several sorts of grain, meal, and flour, (fit to make the different sorts of bread allowed to be made there,) shall *bona fide* sell for, in the respective public markets in or near to such place, during the whole market, and not at particular times thereof, or on particular contracts only, to be given in to them, and certified upon oath, in such manner, and by such persons, and on such day in every week, as they shall respectively appoint. And the price which shall be so certified, shall be entered by the persons who shall certify the same, in books to be provided and kept by them for that purpose; and within two days after every such price shall be so returned, the assize and weight of bread for such place, and

the price to be paid for the same, shall be set by such court or magistrates respectively as aforesaid. And the assize so set shall commence on such day in every week, and be in force for such time, not exceeding seven days from the setting of such assize, as such court or magistrates respectively shall direct.

31 G.2. c.29.

By stat. 13 *G*. 3. *c*. 62. § 19. Where the chief magistracy of any borough or corporation lies and is vested in two bailiffs, one of the two in the absence of the other may set the assize, and do every thing in this act directed for setting the same.

13 G.3. c.62. Chief magistracy vested in two bailiffs.

By stat. 31 *G*. 2. *c*. 29. § 8. If two justices of counties at large, ridings, or divisions, shall at any time think fit to set an assize of bread, for any place within the limits of their jurisdiction; in such case, it shall be lawful for such two justices to cause the price, which grain, meal, and flour (fit to make the several sorts of bread that shall be made for sale in any such place) shall *bonâ fide* sell for in the respective public corn market or markets in or near any such place, during the whole market, and not at any particular times thereof, or on special contracts only, to be given and certified on oath to them at their respective places of abode, on such day in every week as they shall appoint, by the clerks of the market or markets in or near such places, or such other person as such two justices shall for that purpose appoint. And the price so returned shall be entered by the person so returning the same in books to be provided by them and kept for that purpose. And within two days after such return, the assize may be by them set for every such place, for any time not exceeding fourteen days from the setting thereof. And the assize so set, from time to time, shall commence and be in force at such time after every such setting thereof, and be made public in such places for which the same shall be so set, in such manner as the justices who set the same shall direct.

31 G.2. c.29. How in places within counties at large.

§ 9. Any maker of bread for sale in any other city, (than *London*,) town corporate, borough, or place, where the assize shall at any time be thought proper to be set, shall have liberty at all seasonable times, in the day-time, the next day after such returns shall be made and entered as aforesaid, to see the said entry, without paying any thing for the same; to the intent every such maker of bread for sale may have an opportunity on the said next day after such entry made as aforesaid, to offer to any such court, mayor, bailiffs, aldermen, or other chief magistrate or magistrates, or justices as aforesaid who shall think fit to set such assize within their respective jurisdiction, and before any such assize shall be set, such objections as he can reasonably make against any advance or reduction to be made in such assize so to be set as aforesaid.

Bakers may inspect the certificate.

§ 10. No baker of bread for sale shall be liable to pay any fee, gratuity, or reward, to any person for or by means of any assize to be set.

Bakers to pay no fee for the assize.

By stat. 53 *G*. 3. *c*. 116. § 1., reciting that whereas by stats. 31 *G*. 2. *c*. 29. and 13 *G*. 3. *c*. 62. provision is made for setting the price and assize of bread, according to the several regulations contained in the said acts for that purpose: and whereas by stats. 37 *G*. 3. *c*. 98. and 45 *G*. 3. *c*. 23. certain other provisions and regulations are made for carrying the purposes of the said stat. 31 *G*. 2. *c*. 29. into execution, so far as relates to the assize and making of bread

53 G.3. c.116.

53 G. 3. c. 116.

Sed vide stat. 55 G. 3. c. xcix. ante, repealed by stat. 3 G. 4. c. 106.

to be sold in the city of *London* and the liberties thereof, and within the weekly bills of mortality, and within ten miles of the *Royal Exchange*; and by the said acts a fixed allowance is given to the makers and sellers of bread residing within those limits: and whereas it is expedient that the makers and sellers of bread residing beyond the said limits, in places where an assize and price of bread is set, should also receive an allowance for their charges, pains, labour, livelihood, and profit; and that regulations should be made for procuring more correct returns of the prices for which wheat and wheat flour are sold, in or near places where an assize of bread is set: it is enacted, that when and so often as the court of mayor and aldermen, in any city where there shall be any such court, and when such court shall sit; and where there shall be no such court, or there being any such, when the same shall not sit, the mayor, bailiffs, or other chief magistrate of any such city; and in towns corporate or boroughs, the mayor, bailiffs, aldermen, or other chief magistrate or magistrates for the time being of any such town corporate or borough; or two or more justices of the peace in such towns and places where there shall be no such mayor, bailiffs, aldermen, or chief magistrates; and when and so often as any two or more justices of the peace of counties at large, ridings, divisions, or districts, and whose respective jurisdiction shall be beyond the city of *London* and the liberties thereof, and beyond the weekly bills of mortality, and ten miles of the *Royal Exchange*, shall deem it expedient to regulate the price and assize of bread within their several and respective jurisdictions (*a*), every such court, mayor, &c. shall, before they shall set any price or assize of bread, nominate and appoint a fit and proper person, (not being a cornfactor, miller, maltster, baker, clerk, agent, or other person buying, selling, or dealing in wheat or wheat flour, or bread made thereof,) residing within or near such city, town corporate, or borough, county, division, riding, district, or other place, to receive weekly the returns hereafter directed to be made of the prices and quantities of wheat and wheat flour bought or sold in or near any such city, town corporate, or borough, division, riding, district or other place where an assize is intended to be set, and the person so to be appointed shall be called "receiver of assize returns" for such city, &c. &c.; and every such court, mayor, &c. shall in the same manner from time to time, upon the death, removal, or resignation of any such receiver, appoint some other fit and proper person as aforesaid to be receiver of assize returns for any such city, &c. &c.

Receiver of assize returns to be appointed where assize is to be fixed.

Receiver of assize returns to take an

§ 2. Every person so to be appointed receiver as aforesaid shall, previous to his taking upon him the said office, take and subscribe, before the mayor or other chief magistrate of the city, &c. for which he shall be appointed or before any one justice for any county, &c. for which he shall be appointed receiver, the following oath [*or, being of the people called Quakers*, affirmation,] *viz.*

Oath.

I A. B. *do swear* [or, *affirm*], *that I will at all times during the time I hold the office of receiver of assize returns for* [the name of the place for which appointed] *make true and correct returns*

(*a*) See stat. 5 *G.* 4. *c.* 50. § 1. *post*, p. 412. n. (*a*).

53 G. 3. c. 116.

of the whole quantities and prices of wheat, and true and correct returns of the whole quantities and prices of wheaten flour fit for making wheaten bread, standard wheaten bread, and household bread, taken separately, which shall, by means of the returns made to me as receiver of assize returns, under the directions and regulations of an act, passed in the fifty-third year of the reign of king George *the Third, intituled* [here insert the title of this act], *appear to have been bought within the times specified in the said returns; and also that I will at all times as aforesaid make a true and correct average of the prices of the whole quantity of wheat, and a true and correct average of the prices of the whole quantity of wheaten flour fit for making wheaten bread, standard wheaten bread and household bread, taken separately, which by means of the said returns made to me shall appear to have been so bought, according to the directions and regulations of the said act; and that I will in all things, to the best of my skill and judgment, conform myself, as receiver of assize returns, to the directions of the said act.*

Returns of wheat and flour to be made.

§ 3. And as soon as a receiver of assize returns shall be appointed for any city, &c. &c. where it is intended to set any assize of bread within the same, pursuant to the directions of this act, the court of mayor and aldermen of any such city where there shall be any such court, and when such court shall sit; and where there shall be no such court, or there being any such, when the same shall not sit, the mayor, bailiffs, or other chief magistrate or magistrates of any such city; and in towns corporate or boroughs, the mayor, bailiffs, aldermen, or other chief magistrate or magistrates for the time being of any such town corporate or borough; or two or more justices of the peace in such towns and places where there shall be no such mayor, &c.; and two or more justices of any such county, &c. shall cause notice to be given according to the form annexed to this act, and in such manner as to such court or person or persons shall seem proper, requiring all cornfactors, millers, mealmen, bakers, and other persons who are dealers in wheat or wheat flour, and residing or following their trade within their respective jurisdictions, or who shall buy or sell wheat or wheat flour, either in the public market or by private contract within the same, to make returns on some certain day in each week to the receiver of assize returns appointed for any such city, &c. &c.; and at such place as shall be specified for that purpose, of the true and precise quantities of all wheat and wheaten flour respectively, fit for making wheaten bread, standard wheaten bread, and household bread, which shall have been bought or sold by such cornfactors, millers, mealmen, bakers, or other persons dealers in wheat or wheat flour respectively, within seven days then preceding, and which returns shall specify the true and exact prices for which such wheat or wheaten flour shall have been respectively bought or sold, and the names and residences of the persons of whom bought or to whom sold, and which returns shall be made according to the forms annexed to this act, and be signed by the party making the same: provided always, that no person or persons buying or selling in the course of the seven days then preceding, a less quantity than one quarter of wheat, or one sack of flour, shall be required to make any such returns; and provided also, that when any court, &c. of any city,

53 G. 3. c. 116.

&c., or any two justices of any county, &c. shall be well and duly satisfied that any merchant, dealer, or other person, shall buy or sell wheat or wheat flour solely for the purpose of being sent coastwise, and which shall not be intended to be used or consumed in or within fifteen miles of the place for which such returns are required, any such court, &c. or persons need not require returns from any such merchant, &c. of any such wheat, &c. so intended to be sent coastwise, and not to be used or consumed within fifteen miles of any such place.

Obtaining returns where no sufficient market is held.

§ 4. When in any city, town corporate, or borough, or in any division, district, or riding of any county, or in any other place where any court, &c. &c. authorised by this act to set an assize and price of bread within their respective jurisdictions, shall be desirous of setting the same, and where by reason of there not being a sufficient market, sufficient and satisfactory returns of the quantities and prices of wheat and wheat flour bought and sold within their respective jurisdictions, cannot be obtained, then and in every such case it shall be lawful for any such court, &c. &c. from time to time to require returns to be made of all quantities of wheat and wheaten flour, bought or sold by all cornfactors, millers, mealmen, bakers, and other persons who are dealers in wheat or wheat flour, and who shall be residing or following their trade within the distance of five miles of the respective jurisdictions of such court, or person or persons as aforesaid requiring the same; or who shall buy or sell wheat or wheat flour, either in any public market or by private contract within the said distance; or it shall be lawful for any such court, &c. &c. from time to time to require of any receiver of assize returns of any place near any such city, &c. from which any wheat or wheat flour may from time to time be brought for the supply of any such place, &c., a duplicate of the returns which shall be from time to time made by such receiver of assize returns, of the quantities and prices of wheat and wheat flour bought and sold within the jurisdiction for which such receiver shall be appointed, although such cornfactors, &c. or receiver of assize returns, shall not be within the jurisdiction of the court, &c. requiring such returns; and every such cornfactor, &c. dealers in wheat or wheat flour, and every receiver of assize returns, who shall be required to make any such returns, shall make the same in like manner and under the like regulations in every respect as the like returns of wheat and wheat flour are required to be made by this act; and the said returns which shall be so made of the quantities and prices of wheat and wheat flour, bought and sold either within five miles of the jurisdiction of any place, or which shall be so made by any receiver of assize returns for any other place than the place in which an assize of bread is intended to be set, shall from time to time, in computing the average prices of wheat and wheat flour hereafter directed to be made, be added to and form part of the returns of wheat and wheat flour which shall be made for the place for which an assize of bread is intended to be set.

Returns to be made on declaration.

§ 5. And every cornfactor, &c., dealers in wheat or wheat flour, and who shall be required by this act to make any returns of wheat or wheat flour, bought or sold by them, shall within one month

after they shall be required to make such returns, make a declaration in the form following; that is to say,

53 G. 3. c. 116.

I A. B. do hereby declare, that the returns of the quantities and prices of wheat and wheat flour bought or sold by me, which I shall hereafter make, shall, to the best of my knowledge and belief, be true and just, and to the best of my judgment conformable to the directions of an act passed in the fifty-third year of the reign of king George *the Third, intituled* An act to alter and amend two acts of the thirty-first year of king *George* the Second, and the thirteenth year of his present majesty, so far as relates to the price and assize of bread to be sold out of the city of *London*, and the liberties thereof, and beyond the weekly bills of mortality, and ten miles of the *Royal Exchange*.

Which declaration shall be in writing, and shall be subscribed with the hand of such miller, mealman, baker, or other person who shall be a dealer in wheat or wheat flour, and shall be by them or their agents respectively forthwith delivered to the court, &c. of the city, &c., or to some justice of the county, &c. where the party making the same shall reside, who is hereby required to certify the same to, and such certificate is hereby required to be filed by, the clerk of the peace for such county, &c., or by the town clerk for such city or town respectively; and in case any person shall buy or sell any wheat or wheat flour without having made the said declaration, such person shall for every such neglect forfeit and pay not exceeding *5l.*

Receiver of assize returns to make up a general return.

§ 6. From the said returns of wheat and flour so to be made as aforesaid in every city, &c. &c. where the same shall be made, a general return or account of the quantities, sorts, and prices of all wheat, and flour made of wheat, which shall, by means of the said returns, appear to have been bought within the time specified therein, together with the average price of the whole quantity of wheat, and the average prices of the whole quantity of wheaten flour fit for making wheaten bread, standard wheaten bread, and household bread, taken separately and respectively, shall be prepared and computed by the receiver of assize returns for every such place, within one day from the receiving of the same; and the said general return shall be entered and signed by him in some book to be provided for that purpose, in such manner and form as any such respective court, mayor, bailiff, alderman, chief magistrate or magistrates, or justices as aforesaid, within their respective jurisdictions, shall from time to time appoint; and every such general return and average, when so entered, shall be submitted to such court, or person or persons, for their consideration or correction: provided always, that if any court, &c. &c. as aforesaid, shall at any time suspect that any returns to be made as aforesaid are not truly and *bonâ fide* made, and shall have issued a summons to the party or parties making the same, for the purpose of examining into the truth of the same, pursuant to the power and authority hereafter contained for that purpose, then and in that case the said return or returns whilst under examination shall not be included in or form part of the said general return from which the average prices of wheat and of flour are to be computed as aforesaid.

53 G. 3. c. 116. Setting the assize.

§ 7. And within two days after every such general return and average shall be so made and entered as aforesaid, the assize and weight of each sort of bread on which an assize is intended to be set for every city, &c. where the same shall be made, and the prices to be paid for the same respectively, shall from time to time be set and ascertained by the court of mayor and aldermen of every such city where there shall be any such court, and when the same shall sit, and when such court shall not sit, by the mayor of every such city; and where there shall be no such court of mayor and aldermen in any such city, then by the mayor, bailiffs, or other chief magistrate or magistrates of every such other city; and in towns corporate and boroughs by the mayor, bailiffs, aldermen, or other chief magistrate or magistrates of every such town corporate or borough; and by two or more justices of the peace in towns or places where there shall be no such mayor, bailiffs, aldermen, chief magistrate or magistrates; and in counties at large by two or more justices within their respective jurisdictions, from the said average prices, either of wheat or of flour, according to the prices in the tables annexed to this act, either of wheat or of flour nearest the said average prices, in lieu and place of the tables directed to be made use of by the said 31 *G.* 2. *c.* 29. and 13 *G.* 3. *c.* 62.; and if at any time the price of the bushel of wheat or sack of flour shall not amount to the lowest price mentioned in the said table, or shall exceed the highest price mentioned therein, then in either of the said cases it shall be lawful for all courts, and person and persons duly authorised, to continue to set and ascertain within their several jurisdictions the assize and price of bread made for sale or exposed to sale, whatever the price of the bushel of wheat or sack of flour may be; provided always, that in setting and ascertaining the same, such court, or person or persons respectively, shall duly observe the proportions contained in the said tables annexed to this act, as near as can be: and provided also, that the allowance of fivepence *per* quarter on wheat, which, by an act passed in the thirty-eighth year of the reign of his present majesty, intituled "An act to empower magistrates and justices of the peace in setting the assize of bread to make an allowance on account of the additional duty on salt," magistrates are directed to make the bakers in setting the assize of bread on account of the then additional duty on salt, shall be considered and taken as included in the allowance given to the bakers by the said tables annexed to this act.

38 G. 3. c. 62.

Assize to commence and continue as directed by the court.

§ 8. Every assize which shall be set in pursuance of this act, for any city, town corporate, or borough, shall commence and take place on such day in every week, and be in force for such time not exceeding seven days from the setting of the same, and shall be made public in such manner, as the court, mayor, bailiffs, or other chief magistrate or magistrates who shall set the same, shall from time to time direct and appoint; and every assize which shall be set in pursuance of this act for any county, division, riding, or district, shall commence and take place on such day in every week, and be in force for such time not exceeding fourteen days from the setting of the same, and shall be made public in such manner as the justices of the peace who shall set the same shall from time to time direct and appoint.

§ 9. And in cases where the prices and quantities of wheat or wheat flour bought or sold in distant places shall be returned, and be included in the prices from which the general average price of wheat and of flour is made for any city, town corporate or borough, county, division, riding or place, where an assize of bread is set as hereinbefore directed, the court, mayor, bailiffs, or other chief magistrate or magistrates of any such city, town corporate, or borough, or the justices of the peace in any such county, division, or riding, shall, previous to such average being made, add such an allowance for the expence and risk of carriage or transportation, as from the inquiry or proof made shall to such court or courts, mayor, bailiffs, or other chief magistrate or magistrates, or justices of the peace, appear just and reasonable, so as that the average price of wheat and wheaten flour, for any such city, &c. may be from time to time ascertained according to what such wheat or wheaten flour may truly have cost the person who may have bought the same.

53 G. 3. 116. Where wheat or flour has been brought from a distance, an addition may be made to the assize.

§ 10. Every cornfactor, &c. &c. who is or hereafter shall be a dealer in wheat or flour, and every receiver of assize returns who shall be required by this act to make any return, who shall refuse or neglect to make any such return in manner and form by this act directed, and at the time and the place specified for that purpose, or who shall make any false return, shall forfeit for every such offence any sum not exceeding 10*l.* as the court, or person or persons before whom any such offender shall be convicted, shall think fit and order.

Punishing persons refusing or making false returns.

§ 11. And if any court, mayor, bailiffs, or other chief magistrate or magistrates, or justice or justices of the peace authorised as aforesaid, who shall have thought proper to have ordered any return to be made of the price of wheat or flour, shall at any time within the space of fourteen days after any such return shall have been made, suspect that the same was not truly and *bonâ fide* made, then it shall be lawful for any such court, &c. to summon before them respectively the person or persons making such return; or any other person or persons who shall be thought to be likely to give any information concerning the premises, and to examine them respectively upon oath touching the rates and prices the several sorts of wheat or flour mentioned in the said return were there really and *bonâ fide* bought at or sold for, or agreed so to be by him or them respectively, at any time or times within the space mentioned in the said return; and if any person who shall be so summoned as aforesaid, shall neglect or refuse to appear on such summons (and proof shall be made on oath of such summons having been duly served upon him for that purpose,) or if any person so summoned shall appear, and neglect or refuse to answer such lawful questions touching the premises as shall be proposed to him, by any such court, or person or persons as aforesaid, without some just or reasonable excuse, to be allowed of by any such court, or person or persons as aforesaid, he, on being convicted of any such offence, either by the oath of one or more credible witness or witnesses, or his own confession before any such court, or person or persons, shall on every such conviction forfeit and pay not exceeding 10*l.*, as any such court shall think fit and order; and if any person who shall be so

Ascertaining the correctness of returns.

53 G. 3. c. 116.

examined on oath shall wilfully forswear himself, every such person shall be subject and liable to be prosecuted as for perjury, by indictment or information by due course of law, and if convicted shall be liable to the penalties persons convicted of perjury are subject and liable to.

§ 12. Saves rights of the Universities.

Powers of former acts extended to this act.

§ 13. And all powers, authorities, provisions, directions, penalties, forfeitures, clauses, matters, and things, contained in the said 31 *G.* 2. *c.* 29. and 13 *G.* 3. *c.* 62., or either of them, not altered or varied by any of the provisions of this act, as far as the same are or can be made applicable, and can be applied for carrying into execution the purposes of this act, shall be put in execution for enforcing this act, and the penalties by this act inflicted shall be recovered and applied in like manner as the penalties inflicted by the said 31 *G.* 2. are directed to be recovered and applied.

Commencement of act.

§ 14. This act shall take effect immediately after one calendar month from the passing thereof.

§ 15. A public act.

SCHEDULES to which this Act refers.

Schedule, No. 1.

FORM OF RETURN OF WHEAT.

An ACCOUNT of all the Wheat fit for the Purpose of making Wheaten Bread, bought or sold [*as the case may be*] by [*insert Name*] of [*insert Residence*] in the Parish of from to [*insert Dates*] both inclusive.

Date when bought or sold.	Seller's or Buyer's Name and Residence.	Quantities of Wheat. Qrs. Bush.	Price per Quarter.	Total Price.

Schedule, No. 2.

FORM OF RETURN OF WHEATEN FLOUR.

An ACCOUNT of all the Flour fit for making Wheaten Bread, bought or sold, [*as the case may be*] by [*Name*] of [*Residence*] in the Parish of from to [*insert Dates*] both inclusive.

Date when bought or sold.	Seller's or Buyer's Name and Residence.	Number of Sacks.	Price per Sack.

Schedule, No. 3.

FORM OF RETURN OF STANDARD WHEATEN FLOUR.

An ACCOUNT of all the Flour fit for making Standard Wheaten Bread, bought or sold, [*as the case may be*] by [*Name*] of [*Residence*] in the Parish of from to [*insert Dates*] both inclusive.

Date when bought or sold.	Seller's or Buyer's Name and Residence.	Number of Sacks.	Price per Sack.

N. B. The Flour included in this Return is to weigh Three-fourths of the Weight of the Wheat of which it is made.

Schedule, No. 4.

FORM OF RETURN OF HOUSEHOLD FLOUR.

An ACCOUNT of all the Flour fit for making Household Bread bought or sold [*as the case may be*] by [*Name*] of [*Residence*] in the Parish of from to [*insert Dates*] both inclusive.

Date when bought or sold.	Seller's or Buyer's Name and Residence.	Number of Sacks.	Price per Sack.

Schedule, No. 5.

FORM of NOTICE when an Assize of Bread is intended to be set for any place.

[*Insert name of place*] To wit. } NOTICE is hereby given, that by virtue of an act of parliament passed in the fifty-third year of the reign of king *George* the Third, intituled *An act* [*here insert the title of this act*] an assize of bread is intended to be set for this [*insert city or what it may be*]; and all cornfactors, millers, mealmen, bakers, and other persons who are dealers in wheat or wheat flour, and residing or carrying on their business within this jurisdiction, or who buy or sell wheat or wheat flour, either in the public market or by private contract within the same, or within five miles thereof, [*to be added where it is intended to call for returns within that distance*] are hereby required, on [*insert day*] in each week, till further notice, to make returns according to the forms annexed to the said act, and according to the regulatious of the same, to [*inser. name*] who has been duly appointed receiver of assize returns under the said act, at [*insert place where returns to be made*] of the true and precise quantities of all wheat and wheaten flour respectively, fit for making wheaten bread, standard wheaten bread, and houschold bread, which shall have been bought or sold by them within seven days preceding in each week, and the true and exact prices for which such wheat or wheaten flour shall have been respectively bought or sold, and the names and residences of the persons of whom bought, or to whom sold; and which returns are to be signed by the party making the same: and all persons required by this notice to make any such returns who shall neglect or refuse to make the same, or who shall make any false returns, will be liable to a penalty for each offence not exceeding the sum of ten pounds.

(Signed) *A. B.*
Receiver of assize returns for
[*Insert name of place.*]

53 G.3. c.116. Schedule, No. 6.—TABLE of the PRICE and ASSIZE of WHEATEN

THE PRICE TABLE.

	When the Average Price of WHEAT Is returned at		Add for Grinding, Baking, &c. 15s. 10d. per Quarter, or 8d. per Peck Loaf. (a)	OR When the Average Price of FLOUR Is returned at	Add Baking, &c. 13s. 4d. per Sack. (a)	BREAD.			
No.	per Quarter.	per Bushel.	Total Price, and Baking, per Quarter.	per Sack.	Total Price, and Baking, per Sack.	Price of Peck Loaf. To weigh 17lb. 6 oz.	Price of Half Peck Loaf. To weigh 8lb. 11oz.	Price of Quartern Loaf. To weigh 4lb. 5 oz. 8 dr.	Price of Half Quartern Loaf. To weigh 2lb. 2 oz. 12 dr.
	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.
1.	39 8	4 11½	55 6	33 4	46 8	2 4	1 2	0 7	0 3½
2.	41 8	5 2½	57 6	35 0	48 4	2 5	1 2½	0 7¼	0 3¾
3.	43 8	5 5½	59 6	36 8	50 0	2 6	1 3	0 7½	0 3¾
4.	45 8	5 8½	61 6	38 4	51 8	2 7	1 3½	0 7¾	0 3¾
5.	47 8	5 11½	63 6	40 0	53 4	2 8	1 4	0 8	0 4
6.	49 8	6 2½	65 6	41 8	55 0	2 9	1 4½	0 8¼	0 4¼
7.	51 8	6 5½	67 6	43 4	56 8	2 10	1 5	0 8½	0 4¼
8.	53 8	6 8½	69 6	45 0	58 4	2 11	1 5½	0 8¾	0 4¼
9.	55 8	6 11½	71 6	46 8	60 0	3 0	1 6	0 9	0 4½
10.	57 8	7 2½	73 6	48 4	61 8	3 1	1 6½	0 9¼	0 4¾

(continued)

(a) By stat. *5 G. 4. c. 50.* § 1. Reciting, that whereas stat. *53 G. 3. c. 116.* was passed, and whereas by reason of the great decrease that has taken place in the prices of the several articles in the making and baking of bread, since the passing of stat. *53 G. 3. c. 116.*, it is necessary and expedient that the makers and bakers of bread for sale should receive a less allowance for their charges, labour, pains, and profit, than is granted by stat. *53 G. 3. c. 116.*, it is enacted, that from 1st *July* 1824, and from time to time afterwards, and when and as often as any court of mayor and aldermen of any city, town corporate, or borough, county, riding, division, and place within that part of the U. K. of *G. B.* and *Ireland* called *G. B.*, where there shall be any such court, and when the same shall sit, and when such court shall not sit, the mayor of every such city; and where there shall be no such court of mayor and aldermen in any such city, then the mayor, bailiffs, or other chief magistrate or magistrates of every such other city; and in towns corporate and boroughs, the mayor, bailiffs, aldermen, or other chief magistrate or magistrates of every such town corporate or borough; and any two or more justices of the peace in towns or places where there shall be no such mayor, bailiffs, aldermen, chief magistrate or magistrates; and in counties at large, any two or more of H. M's justices of the peace, within their respective jurisdictions, shall set an assize of bread, in execution of the said stat. *53 G. 3. c. 116.*; the allowance to the baker, when the assize shall be set from the average price of wheat, shall be 13*s.* 10¼*d.* *per* quarter, and when the assize shall be set from the average price of flour, such allowance shall be 11*s.* 8*d.* *per* sack of flour, being in each case a decrease of one half an assize, or of one farthing in the quartern loaf, of the allowance given to the baker by stat. *53 G. 3. c. 116.*; and the said court of mayor and aldermen of any such city, town corporate, or borough, county, riding, division, and place where there shall be any such court, and when the same shall sit, and when such court shall

Allowance to bakers under 53 G.3. c 116. to be reduced in manner herein mentioned.

Allowance specified.

BREAD, from the PRICE of WHEAT, and from the PRICE of FLOUR.

THE ASSIZE TABLE.

No. of Assize and Price.	The Penny Loaf, To weigh	The Two-penny Loaf, To weigh	The Three-penny Loaf, To weigh	The Six-penny Loaf, To weigh	The Twelve-penny Loaf, To weigh	The Eighteen-penny Loaf, To weigh	No.
	oz. dr.	*lb. oz. dr.*	*lb. oz. dr.*	*lb. oz. dr.*	*lb. oz. dr.*	*lb. oz. dr.*	
1.	9 14	1 3 13	1 13 12	3 11 9	7 7 2	11 2 11	1.
2.	9 9	1 3 2	1 12 12	3 9 8	7 3 0	10 12 8	2.
	9 4	1 2 8	1 11 12	3 7 9	6 15 3	10 6 12	3.
4.	8 15	1 1 14	1 10 14	3 5 12	6 11 9	10 1 6	4.
5.	8 11	1 1 6	1 10 1	3 4 2	6 8 4	9 12 6	5.
6.	8 6	1 0 13	1 9 4	3 2 8	6 5 1	9 7 10	6.
7.	8 2	1 0 5	1 8 8	3 1 0	6 2 1	9 3 2	7.
8.	7 15	0 15 14	1 7 13	2 15 10	5 15 5	8 14 15	8.
9.	7 11	0 15 7	1 7 2	2 14 5	5 12 10	8 11 0	9.
10.	7 8	0 15 0	1 6 8	2 13 1	5 10 2	8 7 3	10.

(*continued*)

not sit, the mayor of every such city; and where there shall be no such court of mayor and aldermen in any such city, then the mayor, bailiffs, or other chief magistrate or magistrates of every such other city; and in towns corporate and boroughs, the mayor, bailiffs, aldermen, or other chief magistrate, or magistrates of every such town corporate or borough; and any two or more justices of the peace in towns or places where there shall be no such mayor, bailiffs, aldermen, chief magistrate or magistrates; and in counties at large any two or more justices of the peace, within their respective jurisdictions, in setting the said assize, shall make such decrease by taking one half of an assize from each of the prices specified in the tables annexed to 53 *G.* 3. *c.* 116. according to the rules and proportions contained in the said tables, as nearly as can be.

Not to affect the privileges of the universities of Oxford and Cambridge in appointing the assize and weight of bread.

By § 2. Neither this act, or any thing herein contained, shall extend to prejudice the ancient right or custom of the two universities of *Oxford* or *Cambridge*, or either of them, or of their or either of their clerks of the market, or the practice within the several jurisdictions of the said universities, or either of them, used to set, ascertain, and appoint the assize and weight of all sorts of bread to be sold or exposed to sale within their several jurisdictions, but that they and every of them shall and may severally and respectively from time to time, as there shall be occasion, set, ascertain, and appoint, within their several and respective jurisdictions, the assize and weight of all sorts of bread to be sold or exposed to sale by any baker or other person whatsoever within the limits of their several jurisdictions; and shall and may enquire into and punish any breach thereof fully and freely in all respects as they used to do, and as if this act had never been made; any thing herein contained to the contrary thereof notwithstanding.

§ 3. Act to commence 1st *July* 1824. § 4. Public act.

53 G.3. c.116. Schedule, No. 6.—TABLE of the PRICE and ASSIZE of WHEATEN

THE PRICE TABLE.

	When the Average Price of WHEAT		Add for Grinding, Baking, &c. 15s. 10d. per Quarter, or 8d. per Peck Loaf. (a)	OR When the Average Price of FLOUR		BREAD.			
	Is returned at			Is returned at	Add Baking, &c. 13s. 4d. per Sack. (a)				
No.	per Quarter.	per Bushel.	Total Price, and Baking, per Quarter.	per Sack.	Total Price, and Baking, per Sack.	Price of Peck Loaf. To weigh 17lb. 6 oz.	Price of Half Peck Loaf. To weigh 8lb. 11 oz.	Price of Quartern Loaf. To weigh 4lb. 5 oz. 8 dr.	Price of Half Quartern Loaf. To weigh 2lb. 2 oz. 12 dr.
	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.
11.	59 8	7 5½	75 6	50 0	63 4	3 2	1 7	0 9½	0 4¾
12.	61 8	7 8½	77 6	51 8	65 0	3 3	1 7½	0 9¾	0 4¾
13.	63 8	7 11½	79 6	53 4	66 8	3 4	1 8	0 10	0 5
14.	65 8	8 2½	81 6	55 0	68 4	3 5	1 8½	0 10¼	0 5¼
15.	67 8	8 5½	83 6	56 8	70 0	3 6	1 9	0 10½	0 5¼
16.	69 8	8 8½	85 6	58 4	71 8	3 7	1 9½	0 10¾	0 5¼
17.	71 8	8 11½	87 6	60 0	73 4	3 8	1 10	0 11	0 5½
18.	73 8	9 2½	89 6	61 8	75 0	3 9	1 10½	0 11¼	0 5¾
19.	75 8	9 5½	91 6	63 4	76 8	3 10	1 11	0 11½	0 5¾
20.	77 8	9 8½	93 6	65 0	78 4	3 11	1 11½	0 11¾	0 5¾
21.	79 8	9 11½	95 6	66 8	80 0	4 0	2 0	1 0	0 6
22.	81 0	10 1½	96 10	68 4	81 8	4 1	2 0½	1 0¼	0 6¼
23.	83 0	10 4½	98 10	70 0	83 4	4 2	2 1	1 0½	0 6¼
24.	85 0	10 7½	100 10	71 8	85 0	4 3	2 1½	1 0¾	0 6¼
25.	87 0	10 10½	102 10	73 4	86 8	4 4	2 2	1 1	0 6½
26.	89 0	11 1½	104 10	75 0	88 4	4 5	2 2½	1 1¼	0 6¾
27.	91 0	11 4½	106 10	76 8	90 0	4 6	2 3	1 1½	0 6¾
28.	93 0	11 7½	108 10	78 4	91 8	4 7	2 3½	1 1¾	0 6¾
29.	95 0	11 10½	110 10	80 0	93 4	4 8	2 4	1 2	0 7
30.	97 0	12 1½	112 10	81 8	95 0	4 9	2 4½	1 2¼	0 7¼
31.	99 0	12 4½	114 10	83 4	96 8	4 10	2 5	1 2½	0 7¼
32.	101 0	12 7½	116 10	85 0	98 4	4 11	2 5½	1 2¾	0 7¼
33.	103 0	12 10½	118 10	86 8	100 0	5 0	2 6	1 3	0 7½
34.	105 0	13 1½	120 10	88 4	101 8	5 1	2 6½	1 3¼	0 7¾
35.	107 0	13 4½	122 10	90 0	103 4	5 2	2 7	1 3½	0 7¾
36.	109 0	13 7½	124 10	91 8	105 0	5 3	2 7½	1 3¾	0 7¾
37.	111 0	13 10½	126 10	93 4	106 8	5 4	2 8	1 4	0 8
38.	113 0	14 1½	128 10	95 0	108 4	5 5	2 8½	1 4¼	0 8¼
39.	115 0	14 4½	130 10	96 8	110 0	5 6	2 9	1 4½	0 8¼
40.	117 0	14 7½	132 10	98 4	111 8	5 7	2 9½	1 4¾	0 8¼

(a) But see 5 G. 4, c. 50.

BREAD, from the PRICE of WHEAT, and from the PRICE of FLOUR—*continued.*

THE ASSIZE TABLE.

No. of Assize and Price.	The Penny Loaf, To weigh		The Two-penny Loaf, To weigh			The Three-penny Loaf, To weigh			The Six-penny Loaf, To weigh			The Twelve-penny Loaf, To weigh			The Eighteen-penny Loaf, To weigh			No.
	oz.	*dr.*	*lb.*	*oz.*	*dr.*	*lb.*	*oz.*	*dr.*	*lb.*	*oz.*	*dr.*	*lb.*	*oz.*	*dr.*	*lb.*	*oz.*	*dr.*	
11.	7	5	0	14	10	1	5	15	2	11	14	5	7	12	8	3	10	11.
12.	7	2	0	14	4	1	5	6	2	10	12	5	5	8	8	0	4	12.
13.	6	15	0	13	14	1	4	13	2	9	11	5	3	6	7	13	1	13.
14.	6	12	0	13	8	1	4	5	2	8	10	5	1	5	7	10	0	14.
15.	6	9	0	13	3	1	3	13	2	7	11	4	15	6	7	7	2	15.
16.	6	7	0	12	14	1	3	6	2	6	12	4	13	9	7	4	5	16.
17.	6	5	0	12	10	1	2	15	2	5	14	4	11	13	7	1	11	17.
18.	6	2	0	12	5	1	2	8	2	5	1	4	10	2	6	15	3	18.
19.	6	0	0	12	1	1	2	2	2	4	4	4	8	8	6	12	12	19.
20.	5	14	0	11	13	1	1	11	2	3	7	4	6	15	6	10	7	20.
21.	5	12	0	11	9	1	1	6	2	2	12	4	5	8	6	8	4	21.
22.	5	10	0	11	5	1	1	0	2	2	0	4	4	1	6	6	1	22.
23.	5	8	0	11	1	1	0	10	2	1	5	4	2	11	6	4	1	23.
24.	5	7	0	10	14	1	0	5	2	0	11	4	1	6	6	2	1	24.
25.	5	5	0	10	11	1	0	0	2	0	1	4	0	2	6	0	8	25.
26.	5	3	0	10	7	0	15	11	1	15	7	3	14	15	5	14	6	26.
27.	5	2	0	10	4	0	15	7	1	14	14	3	13	12	5	12	10	27.
28.	5	0	0	10	1	0	15	2	1	14	5	3	12	10	5	10	15	28.
29.	4	15	0	9	14	0	14	14	1	13	13	3	11	11	5	9	8	29.
30.	4	14	0	9	12	0	14	10	1	13	4	3	10	8	5	7	12	30.
31.	4	12	0	9	9	0	14	6	1	12	12	3	9	8	5	6	4	31.
32.	4	11	0	9	6	0	14	2	1	12	4	3	8	8	5	4	3	32.
33.	4	10	0	9	4	0	13	14	1	11	12	3	7	9	5	3	6	33.
34.	4	8	0	9	1	0	13	10	1	11	5	3	6	11	5	2	0	34.
35.	4	7	0	8	15	0	13	7	1	10	14	3	5	12	5	0	11	35.
36.	4	6	0	8	13	0	13	3	1	10	7	3	4	15	4	15	6	36.
37.	4	5	0	8	11	0	13	0	1	10	1	3	4	2	4	14	3	37.
38.	4	4	0	8	8	0	12	13	1	9	10	3	3	5	4	12	15	38.
39.	4	3	0	8	6	0	12	10	1	9	4	3	2	8	4	11	13	39.
40.	4	2	0	8	4	0	12	7	1	8	14	3	1	12	4	10	10	40.

(*continued*)

§ 1. *ante*, p. 412. note.

53 G. 3. c. 116.

Schedule, No. 6.—TABLE of the PRICE and ASSIZE of WHEATEN

THE PRICE TABLE.

When the Average Price of WHEAT							OR	When the Average Price of FLOUR				BREAD.							
Is returned at					Add for Grinding, Baking, &c. 15s. 10d. per Quarter, or 8d. per Peck Loaf. (a)			Is returned at		Add Baking, &c. 13s. 4d. per Sack. (a)									
No.	per Quarter.		per Bushel.		Total Price, and Baking, per Quarter.			per Sack.		Total Price, and Baking, per Sack.		Price of Peck Loaf. To weigh 17lb. 6 oz.		Price of Half Peck Loaf. To weigh 8lb. 11 oz.		Price of Quartern Loaf. To weigh 4lb. 5 oz. 8 dr.		Price of Half Quartern Loaf. To weigh 2lb. 2 oz. 12dr.	
	s.	d.	s.	d.	s.	d.		s.	d.	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.
41.	119	0	14	10½	134	10		100	0	113	4	5	8	2	10	1	5	0	8½
42.	121	0	15	1½	136	10		101	8	115	0	5	9	2	10½	1	5¼	0	8¾
43.	123	0	15	4½	138	10		103	4	116	8	5	10	2	11	1	5½	0	8¾
44.	125	0	15	7½	140	10		105	0	118	4	5	11	2	11½	1	5¾	0	8¾
45.	127	0	15	10½	142	10		106	8	120	0	6	0	3	0	1	6	0	9
46.	129	0	16	1½	144	10		108	4	121	8	6	1	3	0½	1	6¼	0	9¼
47.	131	0	16	4½	146	10		110	0	123	4	6	2	3	1	1	6½	0	9¼
48.	133	0	16	7½	148	10		111	8	125	0	6	3	3	1½	1	6¾	0	9¼
49.	135	0	16	10½	150	10		113	4	126	8	6	4	3	2	1	7	0	9½
50.	137	0	17	1½	152	10		115	0	128	4	6	5	3	2½	1	7¼	0	9¾
51.	139	0	17	4½	154	10		116	8	130	0	6	6	3	3	1	7½	0	9¾
52.	141	0	17	7½	156	10		118	4	131	8	6	7	3	3½	1	7¾	0	9¾
53.	143	0	17	10½	158	10		120	0	133	4	6	8	3	4	1	8	0	10
54.	145	0	18	1½	160	10		121	8	135	0	6	9	3	4½	1	8¼	0	10¼
55.	147	0	18	4½	162	10		123	4	136	8	6	10	3	5	1	8½	0	10¼
56.	149	0	18	7½	164	10		125	0	138	4	6	11	3	5½	1	8¾	0	10¼
57.	150	0	18	9	166	10		126	8	140	0	7	0	3	6	1	9	0	10½
58.	152	6	19	0¾	168	4		128	4	141	8	7	1	3	6½	1	9¼	0	10¾
59.	154	6	19	3¾	170	4		130	0	143	4	7	2	3	7	1	9½	0	10¾
60.	156	6	19	6¾	172	4		131	8	145	0	7	3	3	7½	1	9¾	0	10¾
61.	158	6	19	9¾	174	4		133	4	146	8	7	4	3	8	1	10	0	11
62.	160	6	20	0¾	176	4		135	0	148	4	7	5	3	8½	1	10¼	0	11¼
63.	162	6	20	3¾	178	4		136	8	150	0	7	6	3	9	1	10½	0	11¼
64.	164	6	20	6¾	180	4		138	4	151	8	7	7	3	9½	1	10¾	0	11¼
65.	166	6	20	9¾	182	4		140	0	153	4	7	8	3	10	1	11	0	11½
66.	168	6	21	0¾	184	4		141	8	155	0	7	9	3	10½	1	11¼	0	11¾
67.	170	6	21	3¾	186	4		143	4	156	8	7	10	3	11	1	11½	0	11¾
68.	172	6	21	6¾	188	4		145	0	158	4	7	11	3	11½	1	11¾	0	11¾
69.	174	6	21	9¾	190	4		146	8	160	0	8	0	4	0	2	0	1	0
70.	176	6	22	0¾	192	4		148	4	161	8	8	1	4	0½	2	0¼	1	0¼
71.	178	6	22	3¾	194	4		150	0	163	4	8	2	4	1	2	0½	1	0¼
72.	180	6	22	6¾	196	4		151	8	165	0	8	3	4	1½	2	0¾	1	0½

(a) But see *5 G. 4. c. 50.*

N. B.—By this Table, the Number of Pounds of Bread to be sold as the Price of a and, for the Sack of Flour, of

BREAD, from the PRICE of WHEAT, and from the PRICE of FLOUR—*continued.*

THE ASSIZE TABLE.

No. of Assize and Price.	The Penny Loaf, *To weigh*	The Two-penny Loaf, *To weigh*	The Three-penny Loaf, *To weigh*	The Six-penny Loaf, *To weigh*	The Twelve-penny Loaf, *To weigh*	The Eighteen-penny Loaf, *To weigh*	No.
	oz. dr.	*lb. oz. dr.*	*lb. oz. dr.*	*lb. oz. dr.*	*lb. oz. dr.*	*lb. oz. dr.*	
41.	4 1	0 8 2	0 12 4	1 8 8	3 1 0	4 9 9	41.
42.	4 0	0 8 0	0 12 1	1 8 2	3 0 5	4 8 8	42.
43.	3 15	0 7 15	0 11 14	1 7 13	2 15 10	4 7 7	43.
44.	3 14	0 7 13	0 11 11	1 7 7	2 14 15	4 6 7	44.
45.	3 13	0 7 11	0 11 9	1 7 2	2 14 5	4 5 8	45.
46.	3 12	0 7 9	0 11 6	1 6 13	2 13 11	4 4 8	46.
47.	3 12	0 7 8	0 11 4	1 6 8	2 13 1	4 3 9	47.
48.	3 11	0 7 6	0 11 1	1 6 3	2 12 7	4 2 11	48.
49.	3 10	0 7 5	0 10 15	1 5 15	2 11 14	4 1 13	49.
50.	3 9	0 7 3	0 10 13	1 5 10	2 11 5	4 0 15	50.
51.	3 9	0 7 2	0 10 11	1 5 6	2 10 12	4 0 2	51.
52.	3 8	0 7 0	0 10 8	1 5 1	2 10 3	3 15 15	52.
53.	3 7	0 6 15	0 10 6	1 4 13	2 9 11	3 14 9	53.
54.	3 6	0 6 13	0 10 4	1 4 9	2 9 2	3 13 12	54.
55.	3 6	0 6 12	0 10 2	1 4 5	2 8 10	3 13 0	55.
56.	3 5	0 6 11	0 10 0	1 4 1	2 8 3	3 12 4	56.
57.	3 4	0 6 9	0 9 14	1 3 13	2 7 11	3 11 9	57.
58.	3 4	0 6 8	0 9 12	1 3 9	2 7 3	3 10 13	58.
59.	3 3	0 6 7	0 9 11	1 3 6	2 6 12	3 10 2	59.
60.	3 3	0 6 6	0 9 9	1 3 2	2 6 5	3 9 8	60.
61.	3 2	0 6 5	0 9 7	1 2 15	2 5 14	3 8 13	61.
62.	3 1	0 6 3	0 9 5	1 2 11	2 5 7	3 8 3	62.
63.	3 1	0 6 2	0 9 4	1 2 8	2 5 1	3 7 9	63.
64.	3 0	0 6 1	0 9 2	1 2 5	2 4 10	3 6 15	64.
65.	3 0	0 6 0	0 9 1	1 2 2	2 4 4	3 6 6	65.
66.	2 15	0 5 15	0 8 14	1 1 13	2 3 10	3 5 7	66.
67.	2 15	0 5 14	0 8 13	1 1 11	2 3 7	3 5 3	67.
68.	2 14	0 5 13	0 8 12	1 1 8	2 3 1	3 4 10	68.
69.	2 14	0 5 12	0 8 11	1 1 6	2 2 12	3 4 2	69.
70.	2 13	0 5 11	0 8 9	1 1 3	2 2 6	3 3 9	70.
71.	2 13	0 5 10	0 8 8	1 1 0	2 2 0	3 3 0	71.
72.	2 12	0 5 9	0 8 6	1 0 13	2 1 11	3 2 8	72.

§ 1. *ante*, p. 412. note,
Quarter of Wheat, including the Allowance as above, is 413 Pounds Avoirdupois;
347 Pounds 8 Ounces Avoirdupois.

53 G.3. c. 116. Schedule, No. 7.—TABLE of the PRICE and ASSIZE of STANDARD

THE PRICE TABLE.

No.	When the Average Price of WHEAT Is returned at per Quarter.		per Bushel.		Add for Grinding, Baking, &c. 16s. 8d. per Quarter, or 8d. per Peck Loaf. (a) Total Price, and Baking, per Quarter.		OR When the Average Price of FLOUR Is returned at per Sack.		Add Baking, &c. 13s. 4d. per Sack. (a) Total Price, and Baking, per Sack.		BREAD. Price of Peck Loaf. To weigh 17lb. 6oz.		Price of Half Peck Loaf. To weigh 8lb. 11oz		Price of Quartern Loaf. To weigh 4lb. 5oz. 8dr.		Price of Half Quartern Loaf. To weigh 2lb. 2oz. 12 dr.	
	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.
1.	39	6	4	11¼	56	2	31	8	45	0	2	3	1	1½	0	6¾	0	3½
2.	41	6	5	2¼	58	2	33	4	46	8	2	4	1	2	0	7	0	3½
3.	43	8	5	5½	60	4	35	0	48	4	2	5	1	2½	0	7¼	0	3¾
4.	45	8	5	8½	62	4	36	8	50	0	2	6	1	3	0	7½	0	3¾
5.	47	10	5	11¾	64	6	38	4	51	8	2	7	1	3½	0	7¾	0	3¾
6.	49	10	6	2¾	66	6	40	0	53	4	2	8	1	4	0	8	0	4
7.	52	0	6	6	68	8	41	8	55	0	2	9	1	4½	0	8¼	0	4¼
8.	54	2	6	9¼	70	10	43	4	56	8	2	10	1	5	0	8½	0	4¼
9.	56	2	7	0¼	72	10	45	0	58	4	2	11	1	5½	0	8¾	0	4¼
10.	58	4	7	3½	75	0	46	8	60	0	3	0	1	6	0	9	0	4½
11.	60	4	7	6½	77	0	48	4	61	8	3	1	1	6½	0	9¼	0	4¾
12.	62	6	7	9¾	79	2	50	0	63	4	3	2	1	7	0	9½	0	4¾
13.	64	6	8	0¾	81	2	51	8	65	0	3	3	1	7½	0	9¾	0	4¾
14.	66	8	8	4	83	4	53	4	66	8	3	4	1	8	0	10	0	5
15.	68	8	8	7	85	4	55	0	68	4	3	5	1	8½	0	10¼	0	5¼
16.	70	10	8	10¼	87	6	56	8	70	0	3	6	1	9	0	10½	0	5¼
17.	72	10	9	1¼	89	6	58	4	71	8	3	7	1	9½	0	10¾	0	5¼
18.	75	0	9	4½	91	8	60	0	73	4	3	8	1	10	0	11	0	5½
19.	77	0	9	7½	93	8	61	8	75	0	3	9	1	10½	0	11¼	0	5¾
20.	79	2	9	10¾	95	10	63	4	76	8	3	10	1	11	0	11½	0	5¾
21.	81	2	10	1¾	97	10	65	0	78	4	3	11	1	11½	0	11¾	0	5¾
22.	83	4	10	5	100	0	66	8	80	0	4	0	2	0	1	0	0	6
23.	85	4	10	8	102	0	68	4	81	8	4	1	2	0½	1	0¼	0	6¼
24.	87	6	10	11¼	104	2	70	0	83	4	4	2	2	1	1	0½	0	6¼
25.	89	6	11	2¼	106	2	71	8	85	0	4	3	2	1½	1	0¾	0	6¼
26.	91	8	11	5½	108	4	73	4	86	8	4	4	2	2	1	1	0	6½
27.	93	8	11	8½	110	4	75	0	88	4	4	5	2	2½	1	1¼	0	6¾
28.	95	10	11	11¾	112	6	76	8	90	0	4	6	2	3	1	1½	0	6¾
29.	97	10	12	2¾	114	6	78	4	91	8	4	7	2	3½	1	1¾	0	6¾
30.	100	0	12	6	116	8	80	0	93	4	4	8	2	4	1	2	0	7
31.	102	0	12	9	118	8	81	8	95	0	4	9	2	4½	1	2¼	0	7¼
32.	104	2	13	0¼	120	10	83	4	96	8	4	10	2	5	1	2½	0	7¼
33.	106	2	13	3¼	122	10	85	0	98	4	4	11	2	5½	1	2¾	0	7¼
34.	108	4	13	6½	125	0	86	8	100	0	5	0	2	6	1	3	0	7½
35.	110	4	13	9½	127	0	88	4	101	8	5	1	2	6½	1	3¼	0	7¾
36.	112	6	14	0¾	129	2	90	0	103	4	5	2	2	7	1	3½	0	7¾
37.	114	6	14	3¾	131	2	91	8	105	0	5	3	2	7½	1	3¾	0	7¾
38.	116	8	14	7	133	4	93	4	106	8	5	4	2	8	1	4	0	8
39.	118	8	14	10	135	4	95	0	108	4	5	5	2	8½	1	4¼	0	8¼
40.	120	10	15	1¼	137	6	96	8	110	0	5	6	2	9	1	4½	0	8¼

(a) But see stat. 5 G. 4.

WHEATEN BREAD, from the PRICE of WHEAT, and from the PRICE of FLOUR.

THE ASSIZE TABLE.

No. of Assize and Price.	The Penny Loaf, To weigh	The Two-penny Loaf, To weigh	The Three-penny Loaf, To weigh	The Six-penny Loaf, To weigh	The Twelve-penny Loaf, To weigh	The Eighteen-penny Loaf, To weigh	No.
	oz. dr.	*lb. oz. dr.*	*lb. oz. dr.*	*lb. oz. dr.*	*lb. oz. dr.*	*lb. oz. dr.*	
1.	10 7	1 4 14	1 15 5	3 14 10	7 13 4	11 11 14	1.
2.	9 14	1 3 13	1 13 12	3 11 9	7 7 2	11 2 11	2.
3.	9 9	1 3 2	1 12 12	3 9 8	7 3 0	10 12 8	3.
4.	9 4	1 2 8	1 11 12	3 7 9	6 15 3	10 6 12	4.
5.	8 15	1 1 14	1 10 14	3 5 12	6 11 9	10 1 6	5.
6.	8 11	1 1 6	1 10 1	3 4 2	6 8 4	9 12 6	6.
7.	8 6	1 0 13	1 9 4	3 2 8	6 5 1	9 7 10	7.
8.	8 2	1 0 5	1 8 8	3 1 0	6 2 1	9 3 2	8.
9.	7 15	0 15 14	1 7 13	2 15 10	5 15 5	8 14 15	9.
10.	7 11	0 15 7	1 7 2	2 14 5	5 12 10	8 11 0	10.
11.	7 8	0 15 0	1 6 8	2 13 1	5 10 2	8 7 3	11.
12.	7 5	0 14 10	1 5 15	2 11 14	5 7 12	8 3 10	12.
13.	7 2	0 14 4	1 5 6	2 10 12	5 5 8	8 0 4	13.
14.	6 15	0 13 14	1 4 13	2 9 11	5 3 6	7 13 1	14.
15.	6 12	0 13 8	1 4 5	2 8 10	5 1 5	7 10 0	15.
16.	6 9	0 13 3	1 3 13	2 7 11	4 15 6	7 7 2	16.
17.	6 7	0 12 14	1 3 6	2 6 12	4 13 9	7 4 5	17.
18.	6 5	0 12 10	1 2 15	2 5 14	4 11 13	7 1 11	18.
19.	6 2	0 12 5	1 2 8	2 5 1	4 10 2	6 15 3	19.
20.	6 0	0 12 1	1 2 2	2 4 4	4 8 8	6 12 12	20.
21.	5 14	0 11 13	1 1 11	2 3 7	4 6 15	6 10 7	21.
22.	5 12	0 11 9	1 1 6	2 2 12	4 5 8	6 8 4	22.
23.	5 10	0 11 5	1 1 0	2 2 0	4 4 1	6 6 1	23.
24.	5 8	0 11 1	1 0 10	2 1 5	4 2 11	6 4 1	24.
25.	5 7	0 10 14	1 0 5	2 0 11	4 1 6	6 2 1	25.
26.	5 5	0 10 11	1 0 0	2 0 1	4 0 2	6 0 3	26.
27.	5 3	0 10 7	0 15 11	1 15 7	3 14 15	5 14 6	27.
28.	5 2	0 10 4	0 15 7	1 14 14	3 13 12	5 12 10	28.
29.	5 0	0 10 1	0 15 2	1 14 5	3 12 10	5 10 15	29.
30.	4 15	0 9 14	0 14 14	1 13 13	3 11 11	5 9 8	30.
31.	4 14	0 9 12	0 14 10	1 13 4	3 10 8	5 7 12	31.
32.	4 12	0 9 9	0 14 6	1 12 12	3 9 8	5 6 4	32.
33.	4 11	0 9 6	0 14 2	1 12 4	3 8 8	5 4 3	33.
34.	4 10	0 9 4	0 13 14	1 11 12	3 7 9	5 3 6	34.
35.	4 8	0 9 1	0 13 10	1 11 5	3 6 11	5 2 0	35.
36.	4 7	0 8 15	0 13 7	1 10 14	3 5 12	5 0 11	36.
37.	4 6	0 8 13	0 13 3	1 10 7	3 4 15	4 15 6	37.
38.	4 5	0 8 11	0 13 0	1 10 1	3 4 2	4 14 3	38.
39.	4 4	0 8 8	0 12 13	1 9 10	3 3 5	4 12 15	39.
40.	4 3	0 8 6	0 12 10	1 9 4	3 2 8	4 11 13	40.

(continued.)

c. 50. § 1. *ante*, p. 412. note.

Schedule, No. 7.—TABLE of the PRICE and ASSIZE of STANDARD WHEATEN.

THE PRICE TABLE.

No.	When the Average Price of WHEAT Is returned at per Quarter.		When the Average Price of WHEAT Is returned at per Bushel.		Add for Grinding, Baking, &c. 16s. 8d. per Quarter, or 8d. per Peck Loaf. (a) Total Price, and Baking, per Quarter.		OR When the Average Price of FLOUR Is returned at per Sack.		Add Baking, &c. 13s. 4d. per Sack. (a) Total Price, and Baking, per Sack.		BREAD. Price of Peck Loaf. To weigh 17lb. 6oz.		Price of Half Peck Loaf. To weigh 8lb. 11oz.		Price of Quartern Loaf. To weigh 4lb. 5oz. 8 dr.		Price of Half Quartern Loaf. To weigh 2lb. 2oz. 12 dr.	
	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.
41.	122	10	15	4¼	139	6	98	4	111	8	5	7	2	9½	1	4¾	0	8¼
42.	125	0	15	7½	141	8	100	0	113	4	5	8	2	10	1	5	0	8½
43.	127	0	15	10½	143	8	101	8	115	0	5	9	2	10½	1	5¼	0	8¾
44.	129	2	16	1¾	145	10	103	4	116	8	5	10	2	11	1	5½	0	8¾
45.	131	2	16	4¾	147	10	105	0	118	4	5	11	2	11½	1	5¾	0	8¾
46.	133	4	16	8	150	0	106	8	120	0	6	0	3	0	1	6	0	9
47.	135	4	16	11	152	0	108	4	121	8	6	1	3	0½	1	6¼	0	9¼
48.	137	6	17	2¼	154	2	110	0	123	4	6	2	3	1	1	6½	0	9¼
49.	139	6	17	5¼	156	2	111	8	125	0	6	3	3	1½	1	6¾	0	9¼
50.	141	8	17	8½	158	4	113	4	126	8	6	4	3	2	1	7	0	9½
51.	143	8	17	11½	160	4	115	0	128	4	6	5	3	2½	1	7¼	0	9¾
52.	145	10	18	2¾	162	6	116	8	130	0	6	6	3	3	1	7½	0	9¾
53.	147	10	18	5¼	164	6	118	4	131	8	6	7	3	3½	1	7¾	0	9¾
54.	150	0	18	9	166	8	120	0	133	4	6	8	3	4	1	8	0	10
55.	152	0	19	0	168	8	121	8	135	0	6	9	3	4½	1	8¼	0	10¼
56.	154	2	19	3¼	170	10	123	4	136	8	6	10	3	5	1	8½	0	10¼
57.	156	2	19	6¼	172	10	125	0	138	4	6	11	3	5½	1	8¾	0	10¼
58.	158	4	19	9½	175	0	126	8	140	0	7	0	3	6	1	9	0	10½
59.	160	4	20	0½	177	0	128	4	141	8	7	1	3	6½	1	9¼	0	10¾
60.	162	6	20	3¾	179	2	130	0	143	4	7	2	3	7	1	9½	0	10¾
61.	164	6	20	6¼	181	2	131	8	145	0	7	3	3	7½	1	9¾	0	10¾
62.	166	8	20	10	183	4	133	4	146	8	7	4	3	8	1	10	0	11
63.	168	8	21	1	185	4	135	0	148	4	7	5	3	8½	1	10¼	0	11¼
64.	170	10	21	4¼	187	6	136	8	150	0	7	6	3	9	1	10½	0	11¼
65.	172	10	21	7¼	189	6	138	4	151	8	7	7	3	9½	1	10¾	0	11¼
66.	175	0	21	10½	191	8	140	0	153	4	7	8	3	10	1	11	[illegible]	11½
67.	177	0	22	1⅛	193	8	141	8	155	0	7	9	3	10½	1	11¼	0	11¾
68.	179	2	22	4¾	195	10	143	4	156	8	7	10	3	11	1	11½	0	11¾
69.	181	2	22	7¾	197	10	145	0	158	4	7	11	3	11½	1	11¾	0	11¾
70.	183	4	22	11	200	0	146	8	160	0	8	0	4	0	2	0	1	0

(a) But see stat. 5 G. 4.

N. B.— By this Table, the Number of Pounds of Bread to be sold as the Price of a and for the Sack of Flour,

BREAD, from the PRICE of WHEAT, and from the PRICE of FLOUR—*continued.*

THE ASSIZE TABLE.

No. of Assize and Price.	The Penny Loaf, To weigh		The Two-penny Loaf, To weigh			The Three-penny Loaf, To weigh			The Six-penny Loaf, To weigh			The Twelve-penny Loaf, To weigh			The Eighteen-penny Loaf, To weigh			No.
	oz.	*dr.*	*lb.*	*oz.*	*dr.*	*lb.*	*oz.*	*dr.*	*lb.*	*oz.*	*dr.*	*lb.*	*oz.*	*dr.*	*lb.*	*oz.*	*dr.*	
41.	4	2	0	8	4	0	12	7	1	8	14	3	1	12	4	10	10	41.
42.	4	1	0	8	2	0	12	4	1	8	8	3	1	0	4	9	9	42.
43.	4	0	0	8	0	0	12	1	1	8	2	3	0	5	4	8	8	43.
44.	3	15	0	7	15	0	11	14	1	7	13	2	15	10	4	7	7	44.
45.	3	14	0	7	13	0	11	11	1	7	7	2	14	15	4	6	7	45.
46.	3	13	0	7	11	0	11	9	1	7	2	2	14	5	4	5	8	46.
47.	3	12	0	7	9	0	11	6	1	6	13	2	13	11	4	4	8	47.
48.	3	12	0	7	8	0	11	4	1	6	8	2	13	1	4	3	9	48.
49.	3	11	0	7	6	0	11	1	1	6	3	2	12	7	4	2	11	49.
50.	3	10	0	7	5	0	10	15	1	5	15	2	11	14	4	1	13	50.
51.	3	9	0	7	3	0	10	13	1	5	10	2	11	5	4	0	15	51.
52.	3	9	0	7	2	0	10	11	1	5	6	2	10	12	4	0	2	52.
53.	3	8	0	7	0	0	10	8	1	5	1	2	10	3	3	15	15	53.
54.	3	7	0	6	15	0	10	6	1	4	13	2	9	11	3	14	9	54.
55.	3	6	0	6	13	0	10	4	1	4	9	2	9	2	3	13	12	55.
56.	3	6	0	6	12	0	10	2	1	4	5	2	8	10	3	13	0	56.
57.	3	5	0	6	11	0	10	0	1	4	1	2	8	3	3	12	4	57.
58.	3	4	0	6	9	0	9	14	1	3	13	2	7	11	3	11	9	58.
59.	3	4	0	6	8	0	9	12	1	3	9	2	7	3	3	10	13	59.
60.	3	3	0	6	7	0	9	11	1	3	6	2	6	12	3	10	2	60.
61.	3	3	0	6	6	0	9	9	1	3	2	2	6	5	3	9	8	61.
62.	3	2	0	6	5	0	9	7	1	2	15	2	5	14	3	8	13	62.
63.	3	1	0	6	3	0	9	5	1	2	11	2	5	7	3	8	3	63.
64.	3	1	0	6	2	0	9	4	1	2	8	2	5	1	3	7	9	64.
65.	3	0	0	6	1	0	9	2	1	2	5	2	4	10	3	6	15	65.
66.	3	0	0	6	0	0	9	1	1	2	2	2	4	4	3	6	6	66.
67.	2	15	0	5	15	0	8	14	1	1	13	2	3	10	3	5	7	67.
68.	2	15	0	5	14	0	8	13	1	1	11	2	3	7	3	5	3	68.
69.	2	14	0	5	13	0	8	12	1	1	8	2	3	1	3	4	10	69.
70.	2	14	0	5	12	0	8	11	1	1	6	2	2	12	3	4	2	70.

c. 50. § 1. *ante*, p. 412. note.
Quarter of Wheat, including the Allowance as above, is 434 Pounds Avoirdupois;
347 Pounds 8 Ounces.

53 G.3. c.116. Schedule, No. 8.—TABLE of the PRICE and ASSIZE of HOUSEHOLD

THE PRICE TABLE.

	When the Average Price of WHEAT				Add for Grinding, Baking, &c. 18*s.* per Quarter, or 8*d.* per Peck Loaf. (*a*)		OR When the Average Price of FLOUR				BREAD.							
	Is returned at						Is returned at		Add Baking, &c. 13*s.* 4*d.* per Sack. (*a*)									
No.	per Quarter.		per Bushel.		Total Price and Baking, per Quarter.		per Sack.		Total Price, and Baking, per Sack.		Price of Peck Loaf. To weigh 17lb. 6oz.		Price of Half Peck Loaf. To weigh 8lb. 11oz.		Price of Quartern Loaf. To weigh 4lb. 5oz. 8dr.		Price of Half Quartern Loaf. To weigh 2lb. 2oz. 12dr.	
	s.	*d.*	*s.*	*d.*	*s.*	*d.*	*s.*	*d.*	*s.*	*d.*	*s.*	*d.*	*s.*	*d.*	*s.*	*d.*	*s.*	*d.*
1.	38	2	4	9¼	56	2	28	4	41	8	2	1	1	0½	0	6¼	0	3¼
2.	40	6	5	0¾	58	4	30	0	43	4	2	2	1	1	0	6½	0	3¼
3.	42	8	5	4	60	8	31	8	45	0	2	3	1	1½	0	6¾	0	3½
4.	44	10	5	7¼	62	10	33	4	46	8	2	4	1	2	0	7	0	3½
5.	47	0	5	10½	65	0	35	0	48	4	2	5	1	2½	0	7¼	0	3¾
6.	49	4	6	2	67	4	36	8	50	0	2	6	1	3	0	7½	0	3¾
7.	51	6	6	5¼	69	6	38	4	51	8	2	7	1	3½	0	7¾	0	3¾
8.	53	8	6	8½	71	8	40	0	53	4	2	8	1	4	0	8	0	4
9.	56	0	7	0	74	0	41	8	55	0	2	9	1	4½	0	8¼	0	4¼
10.	58	2	7	3¼	76	2	43	4	56	8	2	10	1	5	0	8½	0	4¼
11.	60	6	7	6¾	78	6	45	0	58	4	2	11	1	5½	0	8¾	0	4¼
12.	62	8	7	10	80	8	46	8	60	0	3	0	1	6	0	9	0	4½
13.	65	0	8	1½	83	0	48	4	61	8	3	1	1	6½	0	9¼	0	4¾
14.	67	2	8	4¾	85	2	50	0	63	4	3	2	1	7	0	9½	0	4¾
15.	69	6	8	8¼	87	6	51	8	65	0	3	3	1	7½	0	9¾	0	4¾
16.	71	8	8	11½	89	8	53	4	66	8	3	4	1	8	0	10	0	5
17.	74	0	9	3	92	0	55	0	68	4	3	5	1	8½	0	10¼	0	5¼
18.	76	2	9	6¼	94	2	56	8	70	0	3	6	1	9	0	10½	0	5¼
19.	78	6	9	9¾	96	6	58	4	71	8	3	7	1	9½	0	10¾	0	5¼
20.	80	8	10	1	98	8	60	0	73	4	3	8	1	10	0	11	0	5½
21.	83	0	10	4½	101	0	61	8	75	0	3	9	1	10½	0	11¼	0	5¾
22.	85	4	10	8	103	4	63	4	76	8	3	10	1	11	0	11½	0	5¾
23.	87	6	10	11¼	105	6	65	0	78	4	3	11	1	11½	0	11¾	0	5¾
24.	89	8	11	2½	107	8	66	8	80	0	4	0	2	0	1	0	0	6
25.	92	0	11	6	110	0	68	4	81	8	4	1	2	0½	1	0¼	0	6¼
26.	94	2	11	9¼	112	2	70	0	83	4	4	2	2	1	1	0½	0	6¼
27.	96	6	12	0¾	114	6	71	8	85	0	4	3	2	1½	1	0¾	0	6¼
28.	98	8	12	4	116	8	73	4	86	8	4	4	2	2	1	1	0	6½
29.	101	0	12	7½	119	0	75	0	88	4	4	5	2	2½	1	1¼	0	6¾
30.	103	2	12	10¾	121	2	76	8	90	0	4	6	2	3	1	1½	0	6¾
31.	105	6	13	2¼	123	6	78	4	91	8	4	7	2	3½	1	1¾	0	6¾
32.	107	8	13	5½	125	8	80	0	93	4	4	8	2	4	1	2	0	7
33.	110	0	13	9	128	0	81	8	95	0	4	9	2	4½	1	2¼	0	7¼
34.	112	2	14	0¼	130	2	83	4	96	8	4	10	2	5	1	2½	0	7¼
35.	114	6	14	3¾	132	6	85	0	98	4	4	11	2	5½	1	2¾	0	7¼

(*a*) But see stat. 5 *G.* 4.

BREAD, from the PRICE of WHEAT, and from the PRICE of FLOUR.

THE ASSIZE TABLE.

No. of Assize and Price.	The Penny Loaf, To weigh		The Two-penny Loaf, To weigh			The Three-penny Loaf, To weigh			The Six-penny Loaf, To weigh			The Twelve-penny Loaf, To weigh			The Eighteen-penny Loaf, To weigh			No.
	oz.	*dr.*	*lb.*	*oz.*	*dr.*	*lb.*	*oz.*	*dr.*	*lb.*	*oz.*	*dr.*	*lb.*	*oz.*	*dr.*	*lb.*	*oz.*	*dr.*	
1.	11	1	1	6	3	2	1	5	4	2	11	8	5	7	12	8	2	1.
2.	10	11	1	5	6	2	0	7	4	0	2	8	0	4	12	0	7	2.
3.	10	4	1	4	9	1	15	5	3	13	12	7	11	8	11	9	5	3.
4.	9	14	1	3	13	1	13	12	3	11	9	7	7	2	11	2	11	4.
5.	9	9	1	3	2	1	12	12	3	9	8	7	3	0	10	12	8	5.
6.	9	4	1	2	8	1	11	12	3	7	9	6	15	3	10	6	12	6.
7.	8	15	1	1	14	1	10	14	3	5	12	6	11	9	10	1	6	7.
8.	8	11	1	1	6	1	10	1	3	4	2	6	8	4	9	12	6	8.
9.	8	6	1	0	13	1	9	4	3	2	8	6	5	1	9	7	10	9.
10.	8	2	1	0	5	1	8	8	3	1	0	6	2	1	9	3	2	10.
11.	7	15	0	15	14	1	7	13	2	15	10	5	15	5	8	14	15	1.
12.	7	11	0	15	7	1	7	2	2	14	5	5	12	10	8	11	0	12.
13.	7	8	0	15	0	1	6	8	2	13	1	5	10	2	8	7	3	13.
14.	7	5	0	14	10	1	5	15	2	11	14	5	7	12	8	3	10	14.
15.	7	2	0	14	4	1	5	6	2	10	12	5	5	8	8	0	4	15.
16.	6	15	0	13	14	1	4	11	2	9	11	5	3	6	7	13	1	16.
17.	6	12	0	13	8	1	4	5	2	8	10	5	1	5	7	10	0	17.
18.	6	9	0	13	3	1	3	13	2	7	11	4	15	6	7	7	2	18.
19.	6	7	0	12	14	1	3	6	2	6	12	4	13	9	7	4	5	19.
20.	6	5	0	12	10	1	2	15	2	5	14	4	11	13	7	1	11	20.
21.	6	2	0	12	5	1	2	8	2	5	1	4	10	2	6	15	3	21.
22.	6	0	0	12	1	1	2	2	2	4	4	4	8	8	6	12	12	22.
23.	5	14	0	11	13	1	1	11	2	3	7	4	6	15	6	10	7	23.
24.	5	12	0	11	9	1	1	6	2	2	12	4	5	8	6	8	4	24.
25.	5	10	0	11	5	1	1	0	2	2	0	4	4	1	6	6	1	25.
26.	5	8	0	11	1	1	0	10	2	1	5	4	2	11	6	4	1	26.
27.	5	7	0	10	14	1	0	5	2	0	11	4	1	6	6	2	1	27.
28.	5	5	0	10	11	1	0	0	2	0	1	4	0	2	6	0	3	28.
29.	5	3	0	10	7	0	15	11	1	15	7	3	14	15	5	14	6	29.
30.	5	2	0	10	4	0	15	7	1	14	14	3	13	12	5	12	10	30.
31.	5	0	0	10	1	0	15	2	1	14	5	3	12	10	5	10	15	31.
32.	4	15	0	9	14	0	14	14	1	13	13	3	11	11	5	9	8	32.
33.	4	14	0	9	12	0	14	10	1	13	4	3	10	8	5	7	12	33.
34.	4	12	0	9	9	0	14	6	1	12	12	3	9	8	5	6	4	34.
35.	4	11	0	9	6	0	14	2	1	12	4	3	8	8	5	4	3	35.

(continued.)

c. 50. § 1. *ante*, 412. note.

53 G.3. c.116. Schedule, No. 8.—TABLE of the PRICE and ASSIZE of HOUSEHOLD

THE PRICE TABLE.

	When the Average Price of WHEAT Is returned at				Add for Grinding, Baking, &c. 18s. per Quarter, or 8d. per Peck Loaf. (a)		OR When the Average Price of FLOUR Is returned at		Add Baking, &c. 13s. 4d. per Sack. (a)		BREAD.							
No.	per Quarter. s.	d.	per Bushel. s.	d.	Total Price, and Baking, per Quarter. s.	d.	per Sack. s.	d.	Total Price, and Baking, per Sack. s.	d.	Price of Peck Loaf. To weigh 17lb. 6 oz. s.	d.	Price of Half Peck Loaf. To weigh 8lb. 11oz. s.	d.	Price of Quartern Loaf. To weigh 1lb. 5 oz. 8 dr. s.	d.	Price of Half Quartern Loaf. To weigh 2lb. 2 oz. 12 dr. s.	d.
36.	116	8	14	7	134	8	86	8	100	0	5	0	2	6	1	3	0	7½
37.	119	0	14	10½	137	0	88	4	101	8	5	1	2	6½	1	3¼	0	7¾
38.	121	2	15	1¼	139	2	90	0	103	4	5	2	2	7	1	3½	0	7¾
39.	123	6	15	5¼	141	6	91	8	105	0	5	3	2	7½	1	3¾	0	7¾
40.	125	8	15	8½	143	8	93	4	106	8	5	4	2	8	1	4	0	8
41.	128	0	16	0	146	0	95	0	108	4	5	5	2	8½	1	4¼	0	8¼
42.	130	2	16	3¼	148	2	96	8	110	0	5	6	2	9	1	4½	0	8¼
43.	132	4	16	6½	150	4	98	4	111	8	5	7	2	9½	1	4¾	0	8¼
44.	134	8	16	10	152	8	100	0	113	4	5	8	2	10	1	5	0	8½
45.	136	8	17	1	154	8	101	8	115	0	5	9	2	10½	1	5¼	0	8¾
46.	139	0	17	4½	157	0	103	4	116	8	5	10	2	11	1	5½	0	8¾
47.	141	2	17	7¾	159	2	105	0	118	4	5	11	2	11½	1	5¾	0	8¾
48.	143	6	17	11¼	161	6	106	8	120	0	6	0	3	0	1	6	0	9
49.	145	8	18	2½	163	8	108	4	121	8	6	1	3	0½	1	6¼	0	9¼
50.	148	0	18	6	166	0	110	0	123	4	6	2	3	1	1	6½	0	9¼
51.	150	4	18	9½	168	4	111	8	125	0	6	3	3	1½	1	6¾	0	9¼
52.	152	8	19	1	170	8	113	4	126	8	6	4	3	2	1	7	0	9½
53.	154	8	19	4	172	8	115	0	128	4	6	5	3	2½	1	7¼	0	9¼
54.	157	0	19	7½	175	0	116	8	130	0	6	6	3	3	1	7½	0	9½
55.	159	2	19	10¾	177	2	118	4	131	8	6	7	3	3½	1	7¾	0	9¾
56.	161	6	20	2¼	179	6	120	0	133	4	6	8	3	4	1	8	0	10
57.	163	8	20	5½	181	8	121	8	135	0	6	9	3	4½	1	8¼	0	10¼
58.	166	0	20	9	184	0	123	4	136	8	6	10	3	5	1	8½	0	10¼
59.	168	4	21	0½	186	4	125	0	138	4	6	11	3	5½	1	8¾	0	10¼
60.	170	8	21	4	188	8	126	8	140	0	7	0	3	6	1	9	0	10½
61.	173	0	21	7½	191	0	128	4	141	8	7	1	3	6½	1	9¼	0	10¼*
62.	175	2	21	10¾	193	2	130	0	143	4	7	2	3	7	1	9½	0	10¼
63.	177	6	22	2¼	195	6	131	8	145	0	7	3	3	7½	1	9¾	0	10¼
64.	179	8	22	5½	197	8	133	4	146	8	7	4	3	8	1	10	0	10½
65	182	0	22	9	200	0	135	0	148	4	7	5	3	8½	1	10¼	0	10¾

N. B.—By this Table the Number of Pounds of Bread to be sold as the Price of a Quarter of

(a) But see stat. 5 G. 4.

* This agrees with the *printed* copy of the act, but *query* whether it ought not to be as follows?

0 10¾
0 10¾
0 10¾
0 11
0 11¼

BREAD, from the PRICE of WHEAT, and from the PRICE of FLOUR—*continued.*

THE ASSIZE TABLE.

No. of Assize and Price.	The Penny Loaf, *To weigh*	The Two-penny Loaf, *To weigh*	The Three-penny Loaf, *To weigh*	The Six-penny Loaf, *To weigh*	The Twelve-penny Loaf, *To weigh*	The Eighteen-penny Loaf, *To weigh*	No.
	oz. dr.	*lb. oz. dr.*	*lb. oz. dr.*	*lb. oz. dr.*	*lb. oz. dr.*	*lb. oz. dr.*	
36.	4 10	0 9 4	0 13 14	1 11 12	3 7 9	5 3 6	36.
37.	4 8	0 9 1	0 13 10	1 11 5	3 6 11	5 2 0	37.
38.	4 7	0 8 15	0 13 7	1 10 14	3 5 12	5 0 11	38.
39.	4 6	0 8 13	0 13 3	1 10 7	3 4 15	4 15 6	39.
40.	4 5	0 8 11	0 13 0	1 10 1	3 4 2	4 14 3	40.
41.	4 4	0 8 8	0 12 13	1 9 10	3 3 5	4 12 15	41.
42.	4 3	0 8 6	0 12 10	1 9 4	3 2 8	4 11 13	42.
43.	4 2	0 8 4	0 12 7	1 8 14	3 1 12	4 10 10	43.
44.	4 1	0 8 2	0 12 4	1 8 8	3 1 0	4 9 9	44.
45.	4 0	0 8 0	0 12 1	1 8 2	3 0 5	4 8 8	45.
46.	3 15	0 7 15	0 11 14	1 7 13	2 15 10	4 7 7	46.
47.	3 14	0 7 13	0 11 11	1 7 7	2 14 15	4 6 7	47.
48.	3 13	0 7 11	0 11 9	1 7 2	2 14 5	4 5 8	48.
49.	3 12	0 7 9	0 11 6	1 6 13	2 13 11	4 4 8	49.
50.	3 12	0 7 8	0 11 4	1 6 8	2 13 1	4 3 9	50.
51.	3 11	0 7 6	0 11 1	1 6 3	2 12 7	4 2 11	51.
52.	3 10	0 7 5	0 10 15	1 5 15	2 11 14	4 1 13	52.
53.	3 9	0 7 3	0 10 13	1 5 10	2 11 5	4 0 15	53.
54.	3 9	0 7 2	0 10 11	1 5 6	2 10 12	4 0 2	54.
55.	3 8	0 7 0	0 10 8	1 5 1	2 10 3	3 15 15	55.
56.	3 7	0 6 15	0 10 6	1 4 13	2 9 11	3 14 9	56.
57.	3 6	0 6 13	0 10 4	1 4 9	2 9 2	3 13 12	57.
58.	3 6	0 6 12	0 10 2	1 4 5	2 8 10	3 13 0	58.
59.	3 5	0 6 11	0 10 0	1 4 1	2 8 3	3 12 4	59.
60.	3 4	0 6 9	0 9 14	1 3 13	2 7 11	3 11 9	60.
61.	3 4	0 6 8	0 9 12	1 3 9	2 7 3	3 10 13	61.
62.	3 3	0 6 7	0 9 11	1 3 6	2 6 12	3 10 2	62.
63.	3 3	0 6 6	0 9 9	1 3 2	2 6 5	3 9 8	63.
64.	3 2	0 6 5	0 9 7	1 2 15	2 5 14	3 8 13	64.
65.	3 1	0 6 3	0 9 5	1 2 11	2 5 7	3 8 3	65.

c. 50. § 1. *ante*, p. 412. note (*a*).
Wheat, including the Allowance as above, is 168lbs. and for the Sack of Flour 317lbs. 8oz.

31 G. 2. c. 29.

By stat. 31 *G.* 2. *c.* 29. § 11. to every return the persons appointed to make the same shall sign their names or marks.

Form of publication of the assize.

§ 12. The assize shall be made public in the form, or to the effect following:

—— *To wit.* { *The Assize of bread set the* —— *day of* —— *for* —— *to take place on the* —— *day of* —— *now next ensuing, and to be in force* —— *for the said* —— *of* —— }

Where penny, two-penny, six-penny, twelve-penny, and eighteen-penny loaves, shall be made as followeth:

	lbs.	oz.	dr.
The 1*d.* loaf wheaten is to weigh - - - -			
Ditto household is to weigh - -			
The 2*d.* loaf wheaten is to weigh - - -			
Ditto household is to weigh - - - -			
The 6*d.* loaf wheaten is to weigh - - - -			
Ditto household is to weigh - - - - -			
The 12*d.* loaf wheaten is to weigh - - -			
Ditto household is to weigh - - -			
The 1*s.* 6*d.* loaf wheaten is to weigh - - -			
Ditto household is to weigh - - -			

Where quartern, half-peck, and peck loaves be made, then as follows:

	lb.	oz.	dr.		s.	d.
The peck loaf wheaten is to weigh -				and is to be sold for		
Ditto household is to weigh -				and is to be sold for		

And the half-peck and quarter of a peck loaves of wheaten and household bread are to weigh in proportion to the weight of a peck loaf; and be so sold. When bread shall be ordered to be made with the meal or flour of rye, barley, oats, pease or beans, either alone or mixed, the assize shall be made public, as the magistrates or justices shall direct.

Bread of different denominations not to be allowed at the same time.

§ 13. Where any 6*d.* 12*d.* and 1*s.* 6*d.* loaves shall be allowed, no peck, half-peck, or quarter of a peck loaves shall be made or sold; on pain of forfeiting not exceeding 40*s.* nor less than 20*s.*

§ 14. Justices in sessions may divide hundreds for setting the assize.

Clerk of the market to keep books.

§ 15. Entry of returns shall be made in a book by the clerk of the market, or other person appointed to make returns and certificates; and also of the rate at which the price, assize, and weight of bread shall be set within his jurisdiction: book to be open for inspection, without fee.

Assize not to be altered till the price of corn alters 3*d.* a bushel.

§ 16. No alteration in the assize shall be made except when the price of wheat or other grain shall be returned as having risen or fallen 3*d.* a bushel since the last return.

Punishment of officers for default.

§ 17. If any meal weigher, clerk of the market, &c. shall neglect or refuse to do any thing by this act required to be done by him, or shall designedly or knowingly make any false certificate or return; or if any constable or other peace officer shall refuse or neglect to obey any warrant in writing delivered to him under the hand and seal of any magistrate or justice, or to do any other act requisite to be done by him for carrying this act into execution; he shall forfeit not exceeding 5*l.* nor less than 20*s.*

§ 18. If any buyer or seller of or dealer in corn, grain, meal or flour, on reasonable request to him made by the meal weighers of the city of *London*, or by the clerks of the market, or other persons respectively appointed to make returns as aforesaid, shall refuse to disclose and make known to them the true real prices which the several sorts of grain, meal, and flour shall be *bonâ fide* bought at, or sold by or for him at any corn market or other place, where corn, grain, meal or flour is usually, openly or publicly sold, within the jurisdiction of such clerk, &c.; or shall knowingly give in any false or untrue price, or which hath been made by any deceitful means; he shall, on conviction thereof by confession, or oath of one witness, or affirmation of a quaker, forfeit not more than 10*l.* nor less than 40*s.*

31 G.2. c.29. **Buyer or seller to declare the price of corn.**

§ 19. If any court, magistrate or justices, who shall have ordered any return to be made of the price of grain, &c. as aforesaid, shall, within three days after such return, suspect that the same was not truly and *bonâ fide* made; they may summon before them any person who shall have bought or sold, or agreed to buy or sell any grain, meal or flour within their respective jurisdictions, or who shall be thought to be likely to give any information concerning the premises; and may examine them upon oath, touching the rates and prices which the several sorts of grain, meal, and flour, or any of them, were really and *bonâ fide* bought at, or sold for, or agreed so to be, by him, at any time within seven days preceding such summons: And if any person so summoned shall neglect or refuse to appear (proof of such summons served being made upon oath); or if any person so summoned shall appear, and neglect or refuse to answer such lawful questions touching the premises as shall be proposed to him, without some just or reasonable excuse, to be allowed by such court, magistrate or justices; he shall on every conviction by oath of one witness, or by confession, forfeit not exceeding 10*l.* nor less than 40*s.*: And if any person so examined shall wilfully forswear himself, he shall suffer as in cases of perjury; Provided, that the party summoned be not obliged to travel above five miles from the place of his abode.

Magistrates may send for them.

§ 20. Whenever any court, magistrate or justices as aforesaid, shall order any bread to be made with the flour or meal of any other grain than wheat, or to be mixed with the flour of wheat, or to be made with the flour or meal of any other sorts of grain, either separate or mixed together; all persons who shall make any bread for sale, in any place where such order shall be made, shall make bread with such mixed meal or flour, in such manner, and of such weight and goodness, and shall sell the same at such prices, as such court, magistrate or justices respectively, shall direct; on pain of forfeiting not more than 5*l.* nor less than 40*s.*

Baker of bread made of other grain than wheat shall conform to the assize.

By stat. 36 *G.* 3. *c.* 22. § 1. 2. 5. certain regulations were imposed upon the making and marking of bread, which are partly amended and partly repealed by stat. 41 *G.* 3. *U. K. c.* 12. which recognises the expediency of extending the rule imposed by stat. 36 *G.* 3. *c.* 22. upon the proportion of wheaten flour to be used in the making of bread, and enacts, That it shall be lawful for any person in any place, and whether any assize or price of bread shall be set in such place or not, to make, bake, sell and

41 G.3. U.K. c.12. **Any person may sell loaves of the whole produce of wheat, or with**

41 G. 3. U. K. c. 12.

the bran, &c. taken therefrom at a price less than the assize.

expose to sale peck loaves, half-peck loaves, quartern loaves, and half-quartern loaves, made of wheaten meal or flour, of the whole produce of the wheat or with the bran only, or the bran and pollards, or any proportion of the bran and pollards, or any other part of the produce of such wheat taken therefrom, at any price at which any person may be willing to purchase the same: Provided always, that the price at which any bread allowed to be sold by stat. 36 *G.* 3. *c.* 22. or by this act, shall in all cases be less than the price of the wheaten bread, upon which an assize or price shall be set, in pursuance of any act of parliament in the place where such other wheaten bread shall be made or sold or exposed to sale, any act or usage to the contrary notwithstanding.

Bread not to be marked in manner directed by former acts.

By § 2. From the passing of this act, so much of the said act as related to the marking of any wheaten bread, or any mixed bread, or to the fixing in a conspicuous part of any shop or window, any specification of the proportion of any mixtures composing any bread, shall be repealed.

How to be marked.

By § 3. From the passing of this act every person who shall make or bake for sale any wheaten bread made of any meal or flour of an inferior quality to the flour used for the bread on which an assize or price shall be set pursuant to any act of parliament, or any mixed bread, shall imprint or distinctly mark upon every loaf of such wheaten bread, a large Roman H, and upon every loaf of such mixed bread a large Roman X.

Not marking, or not well making, or adulterating bread.

§ 4. And that if any person or persons shall omit to imprint or distinctly mark any such wheaten or mixed bread pursuant to the directions of this act, or shall not well make any such wheaten or mixed bread, or shall adulterate the same with any mixture or ingredient not allowed to be used in the making of bread, or shall make or bake for sale, or sell or expose to sale any such peck loaves, half-peck loaves, quartern loaves or half-quartern loaves, or any other loaves, deficient in weight according to the assize of loaves of such denominations respectively contained in any act or acts in force relating to the assize and price of bread, or according to any assize that shall be set in pursuance of any such act or acts, all persons offending therein shall be liable to the like punishments as any bakers or makers of bread for sale are liable to for any the like misdemeanors, offences, or neglects in making, selling, or exposing to or for sale any bread,

Provisions of acts relating to weighing or adulterating bread extended to this act.

§ 5. And that all and every the matters and penalties and forfeitures in any act or acts now in force contained relating to the weighing any bread made for sale or exposed to sale, or searching for any ingredient wherewith any meal, flour or bread may be adulterated, shall be made applicable to the enforcing of the provisions of this act.

Half-quartern loaves may be made.

§ 6. And that it shall be lawful for every baker and maker of bread for sale, and every seller of bread, to make, bake and sell loaves called *half-quarter of a peck loaves*, which shall weigh two pounds two ounces twelve drachms, and on which an assize and price shall be set as near as can be in proportion to other bread, according to the regulations now in force by any act for setting and regulating the price and assize of bread, and all and every the matters in the said acts or any other acts contained relating to setting and ascertaining any assize or price of bread, and also to

the weighing any bread made for sale or exposed to sale, or adulterating any bread, or selling any bread before it has been baked a certain time, shall be made applicable to the setting and ascertaining of such assize and price, and to the bakers, makers and sellers of such loaves, called *half-quarter of a peck loaves*, as fully as if the same were severally re-enacted in this act.

41 G.3. U. K. c.12.

§ 7. A proviso saving the privileges of the city of *London*, and bakers' company.

36 G.3. c.22. Penalty if bread deficient in weight according to the assize. Vide Rex v. Dixon, 3 M. & S. 11. Only the genuine meal or flour.

And in case such loaves (*viz.* peck, half-peck, quartern, and half-quartern) be deficient in weight according to the assize prescribed by stat. 31 *Geo.* 2. *c.* 29., or shall have any mixture in lieu of flour which is not genuine flour or article as it imports to be; or shall have any alum or preparation or mixture in which alum is an ingredient, or any mixture whatsoever, except only the genuine meal or flour, of which the same purports to be made, and common salt, pure water, eggs, milk, yeast and barm, or such other leaven as shall be allowed to be used in the making of bread; every person so offending shall be liable to the like penalties, to be recovered and applied in the same manner as is provided in stats. 31 *Geo.* 2. *c.* 29. — 36 *Geo.* 3. *c.* 22. § 3.

§ 5. Provided, that this act shall not affect the rights of the bakers' company in *London*.

31 G 2. c.29. True making of bread.

By stat. 31 *G.* 2. *c.* 29. § 21. The several sorts of bread which shall be made for sale, or sold, or exposed to or for sale, shall always be well made, and in their several and respective degrees, according to the goodness of the several sorts of meal or flour whereof the same ought to be made; and no alum, or preparation or mixture in which alum shall be an ingredient, or any other mixture or ingredient whatsoever (except only the genuine meal or flour which ought to be put therein, and common salt, pure water, eggs, milk, yeast and barm, or such leaven as shall be allowed to be put therein by those who have set the assize, and where no assize shall be set, then such leaven as any magistrate or justice within his jurisdiction shall allow to be used in making of bread) shall be put into or in anywise used in making dough, or any bread to be sold, or as or for leaven to ferment any dough, or on any other account, in the trade or mystery of making bread, under any pretence whatsoever; on pain that every person (other than a servant or journeyman) who shall knowingly offend in the premises, and shall be convicted (F) thereof by confession or oath of one witness, before any such magistrate or justice respectively, shall forfeit not exceeding 10*l.* nor less than 40*s.*; or shall by warrant of such magistrate or justice be apprehended and committed to the house of correction or some prison of the county, city, town corporate, borough, riding, division or place, where the offence shall have been committed, or the offender shall be apprehended, there to remain and be kept to hard labour, for (not exceeding) one calendar month, nor less than 10 days from the time of such commitment, as such magistrate or justice shall think fit: And if any servant or journeyman baker shall knowingly offend in the premises, and be convicted thereof as aforesaid; he shall forfeit for every offence not more than 5*l.* nor less than 20*s.*; or shall in like manner be apprehended and committed to the house of correction or prison as aforesaid: And it shall be lawful for the magistrate or justice, before whom

F.

31 G. 2. c. 29.

such offender shall be convicted, out of the money forfeited, when recovered, to cause the offender's name, place of abode, and offence, to be published in some newspaper, which shall be printed or published in or near the county, city or place, where any such offence shall have been committed.

Adulterating meal.

§ 22. No person shall knowingly put into any corn, meal, or flour, which shall be ground, dressed, bolted, or manufactured for sale, either at the time of grinding, &c. the same, or at any other time, any ingredient, mixture or thing whatsoever; or shall knowingly sell, offer or expose to sale any meal or flour of any sort of grain, as or for the meal or flour of any other sort of grain, or any thing as or for or mixed with the meal or flour of any grain which shall not be the real and genuine meal or flour of the grain the same shall import to be, and ought to be; on pain of forfeiting not more than *5l.* nor less than *40s.*

Undue mixtures of meal.

§ 23. No person shall knowingly put into any bread which shall be made for sale, any mixture of meal or flour of any other sort of grain than of the grain the same shall import to be, and shall be allowed to be made of, in pursuance of this act; or shall put into any bread which shall be made for sale, any larger or other proportion of any other or different sort of grain, or the meal or flour thereof, than what shall be appointed or allowed to be put therein by this act; or any mixture or thing as, for, or in lieu of flour, which shall not really be the genuine flour the same shall import to be, and ought to be; on pain of forfeiting not more than *5l.* nor less than *20s.*

Penalty for deficiency in weight where there is an assize set.
G.

§ 24. If any person, who shall make any bread for sale, or who shall make, send out or sell, or expose to or for sale, any bread which shall be deficient in weight according to the assize which shall be set for the same, in pursuance of this act, he shall forfeit (G) not exceeding *5s.* nor less than *1s.* for every ounce wanting in the weight every such loaf ought to be of; and for every loaf which shall be found wanting less than an ounce, shall forfeit not exceeding *2s. 6d.* nor less than *6d.*; as such magistrate or justice before whom such bread shall be brought shall think fit: so as such bread which shall be complained of as wanting in weight, in any city, town corporate, borough, liberty, or franchise, or the jurisdiction thereof, shall be brought before some magistrate or justice having jurisdiction in the premises, and weighed before him, within 24 hours after the same shall have been baked, sold, or exposed to sale; and so as such bread which shall be complained of as wanting in weight, in any hundred, riding, division, liberty, rape, wapentake, or place, shall be brought before some justice within such jurisdiction, and weighed before him within three days after the same shall have been baked, sold or exposed to sale; unless it be made out to the satisfaction of such magistate or justice, on the behalf of the party complained of, that such deficiency in weight wholly arose from some unavoidable accident in baking, or otherwise, or was occasioned by some contrivance or confederacy.

[But the time allowed for weighing bread after it is baked is by stat. 39 & 40 *G.* 3. *c.* 74. § 4. extended from 24 to 48 hours after the baking thereof.]

Penalty for selling for a

§ 26. No baker or other person shall ask, or take for any bread which he shall sell, or expose to sale, any greater price

than such bread shall be ascertained to be sold for by the assize as aforesaid; and no baker, or other person who shall make any bread for sale shall refuse or decline to sell any loaf or loaves of any of the sorts of bread which, in pursuance of this act, shall be allowed or ordered to be made, to any person who shall tender ready money in payment for the same, at the price set for the same by the assize, when such person shall have any loaf in his possession to be sold, more than shall be requisite for the immediate necessary use of his family or his customers, and which it shall be incumbent on such baker or other person complained of to prove before the magistrate or justice, to whom such complaint shall be made, if thereunto required by the party complaining; on pain of forfeiting for every such offence not more than 40*s*. nor less than 10*s*.

31 G. 2. c. 29.

greater price than is set by the assize.

[And by stat. 2 & 3 *Ed.* 6. *c.* 15. if any baker shall conspire not to sell bread but at certain prices; every such person shall forfeit 10l. for the first offence; and if not paid in six days he shall be imprisoned twenty days, and have only bread and water for his sustenance; for the second offence 20*l*. or the pillory (*a*); and for the third offence 40*l*. or the pillory (*a*), and the loss of an ear, and to become infamous: And the sessions or leet may hear and determine the same.]

Conspiring to raise the price.

§ 27. No person shall sell or offer to sale any bread of an inferior quality to wheaten bread, at a higher price than household bread shall be set at by the assize; on pain of forfeiting (being convicted thereof by confession, or oath of one witness, before one magistrate or justice) the sum of 20*s*.

Bread inferior to wheaten shall not be sold for a higher price than household.

§ 28. It shall be lawful for any such magistrate or justice, or for any peace officer authorised by warrant of such magistrate or justice, at seasonable times in the day-time, to enter into any house, shop, stall, bakehouse, warehouse, or outhouse, of or belonging to any baker or seller of bread, to search for, view, weigh, and try, all or any the bread which shall be there found: And if any bread, on any such search, shall be found to be wanting either in the goodness of the stuff whereof it shall be made, or be deficient in the due baking or working thereof, or shall be wanting in the due weight, or not truly marked, according to this act (*b*), or shall be of any other sort of bread than shall be allowed to be made by virtue of this act; any such magistrate, justice, or peace officer may seize the same; and such magistrate or justice may dispose thereof, as he in his discretion shall think fit, for the better carrying of this act into execution.

Houses may be entered to search for bread.

§ 29. If information shall be given on oath to any magistrate or justice, that there is reasonable cause to suspect, that any miller, who grinds any grain for toll or reward, or any person who doth dress, bolt, or in anywise manufacture any meal or flour for sale, or any baker of bread for sale, doth mix up with or put into any meal or flour ground or manufactured for sale, any mixture, ingredient or thing whatsoever, not the genuine produce of the grain such meal or flour shall import and ought to be, or whereby the purity of any meal or flour in the possession of any such

Mills and other places may be entered to search for adulterated meal.

(*a*) This punishment is abolished, except in cases of perjury, by 56 *G*. 3. c. 138.
(*b*) But as to marking, see stat. 41 *G*. 3. U K. *c*. 12. § 3. *ante*, p. 428.

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miller, mealman, or baker, shall be in any wise adulterated; it shall be lawful for any such magistrate or justice, and also for any peace officer authorised by the warrant of such magistrate or justice, at all seasonable times in the day-time, to enter into any house, mill, shop, bakehouse, stall, boltinghouse, pastry, warehouse or outhouse, of or belonging to any such miller, mealman, or baker, and to search and examine whether any mixture, ingredient or thing, not the genuine produce of the grain such meal or flour shall import and ought to be, shall have been mixed up with, or put into any meal or flour in the possession of any such miller, mealman, or baker, either in the grinding of any grain at the mill, or in the dressing, bolting, or manufacturing thereof, or whereby the purity of any meal or flour shall be in any wise adulterated; and if on such search it shall appear that any offence hath been committed in any such place allowed to be searched as aforesaid; it shall be lawful for any magistrate, justice, or officer authorised as aforesaid, to seize any meal or flour which shall be deemed on such search to have been adulterated, and all mixtures and ingredients which shall be found and deemed to have been used or intended to be used for such adulteration; and such thereof as shall be seized by such peace officer shall, with all convenient speed, be carried to some magistrate or justice within whose jurisdiction the same shall have been seized; and if any magistrate or justice, who shall make any seizure in pursuance of this act, or to whom any such thing so seized shall be brought, shall adjudge that any mixture or ingredients, not the genuine produce of the grain any such meal or flour which shall have been so seized shall import and ought to be, shall have been put into any such meal or flour, or that the purity of any such meal or flour so seized was adulterated by any mixture or ingredient put therein; in such case, every such magistrate or justice is hereby required to dispose of the same as he in his discretion shall think proper.

A baker who sells bread containing pernicious ingredients and unwholesome materials, or even alum in a shape which renders it noxious, is guilty of an indictable offence; although a small quantity of alum may be swallowed without injury, if taken in larger quantities, it deranges the stomach and occasions constipation of the bowels; its tendency is injurious to health, and it is unfit for the food of man. *Rex* v. *Treve*, 2 *East's P. C.* 821. *Rex* v. *Dixon*, 3 *M. & S.* 11. 4 *Campb.* 12. *S. C.*

Penalty of having in possession unlawful ingredients.

§ 30. Every miller, mealman, baker, or seller of bread as aforesaid, in whose house, mill, shop, bakehouse, stall, boltinghouse, pastry, warehouse, outhouse, or possession, any mixture or ingredient shall be found, which shall be adjudged by any magistrate or justice to have been lodged there with an intent to have adulterated the purity of meal, flour, or bread, shall on conviction by confession, or oath of one witness before any such magistrate or justice, forfeit not exceeding 10*l.* nor less than 40*s.*, unless the party charged with such offence shall make it appear to the satisfaction of such magistrate or justice, that such mixture or ingredient was not brought or lodged where the same was seized, with design to have been put into any meal or flour, or to have adulterated the purity thereof; but that the same was there for some other lawful purpose; and it shall be lawful for such magistrate or justice, out of the forfeiture when recovered, to

Not exceeding 10*l.* nor less than 40*s.*

cause the offender's name, place of abode, and offence to be published in some newspaper, printed or published in or near the county, city, or place where such offence shall have been committed.

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§ 31. If any person shall obstruct or hinder such search, or the seizure of any bread or ingredients as aforesaid; he shall forfeit not exceeding 5*l.* nor less than 20*s.*

Penalty of obstructing search.

§ 32. No person who shall follow or be concerned in the business of a miller, mealman, or baker, shall act as a magistrate or justice in the execution of this act; on pain of 50*l.* to him who shall inform and sue for the same in any court of record at *Westminster.*

Person interested not to act as a magistrate.

§ 33. If any person who shall follow the trade of a baker, shall make complaint to any magistrate or justice, and make appear to him by the oath of any credible witness, that any offence which he hath been charged with, and for which he shall have paid any penalty by this act, shall have been occasioned by the wilful neglect or default of any journeyman or other servant employed by him; such magistrate or justice shall issue his warrant to bring such journeyman or servant before himself or any magistrate or justice of the county, &c. where the offender can be found; and on his being thereupon apprehended and brought before such magistrate or justice, the said magistrate or justice shall examine into the matter of such complaint, and on proof thereof upon oath, shall under his hand adjudge and order what reasonable sum shall be paid by such journeyman or servant to his master, by way of recompence for the money he shall have paid by reason of the wilful neglect or default of such journeyman or servant. And if he shall neglect or refuse, on conviction, to pay immediately; such magistrate or justice shall apprehend and commit him to the house of correction, or some other prison of the place where he shall be apprehended or convicted, to be kept to hard labour not exceeding one calendar month, unless payment thereof shall be made after such commitment, and before the expiration of the said term of one calendar month.

Journeymen or servants offending.

§ 34. It shall be lawful for one justice within the several counties, &c. or jurisdictions; to hear (A) and determine in a summary way all offences against this act; and for that purpose to summon (B) before him the party accused; and if he shall not appear or offer some reasonable excuse for his default; then on oath by one witness made of the offence, such magistrate or justice shall issue his warrant for apprehending the offender within his jurisdiction: and on appearance of the party accused, or if he shall not appear, on notice being given to, or left for him at his usual place of abode; or if he cannot be apprehended on a warrant granted against him as aforesaid; such magistrate or justice shall proceed to inquire of the offence, and to examine any witness or witnesses who shall be offered on either side upon oath; and shall convict (C) or acquit the party accused; and if the penalty on such conviction, shall not be paid within twenty-four hours after such conviction, such magistrate, or justice, shall issue his warrant, directed to any peace officer within such jurisdiction to make distress (D); and if any offender shall convey away his goods out of the jurisdiction of such magistrate or justice or so much thereof, that the penalty cannot be levied, then some ma-

Manner of convicting offenders.

A.

B.

C.

D.

31 G. 2. c. 29. gistrate or justice within whose jurisdiction the offender shall have removed his goods, shall back the said warrant, and thereupon the penalty shall be levied by distress, and if within five days the forfeiture shall not be paid, the distress shall be appraised and sold, rendering the overplus, after deducting the forfeiture, and the costs and charges of the prosecution, distress and sale, which charges shall be ascertained by the magistrate, or justice, before whom the offender was convicted, or who backed the warrant, if either of them shall continue alive; and if not, then by some other magistrate or justice where the offender was convicted; and for want of such distress, every such magistrate or justice within whose jurisdiction such offender shall reside or be, shall, on application of the prosecutor, and proof made of the conviction and non-payment of the penalty and charges, commit (E) such offender to the common gaol or house of correction of the city, or county, riding, division, or place where the offender shall be found; there to remain for one calendar month from the time of such commitment, unless payment shall be sooner made; and all such penalties and forfeitures when recovered shall be paid to the informer. But see 32 *G.* 2. *c.* 18. § 2. *infra.*

E.

Witnesses.

§ 35. And if it shall be made out on oath, to the satisfaction of any magistrate or justice, that any one is likely to give material evidence on behalf of the prosecutor or of the person accused, and will not voluntarily appear to be examined; such magistrate or justice shall issue his summons to convene such witness before him, at such seasonable time as in such summons shall be fixed; and if any persons so summoned shall neglect or refuse to appear, and no just excuse shall be offered for such neglect or refusal, then (after proof upon oath of such summons) such magistrate or justice shall issue his warrant to bring such witness before him; and if on his appearance, or on being brought before such magistrate, or justice, he shall refuse to be examined on oath, without offering any just excuse for such refusal, such magistrate, or justice, may, by warrant, commit him to the public prison of the county, riding, &c. in which the person so refusing to be examined shall be, there to remain for (not exceeding) fourteen days, nor less than three, as such magistrate or justice shall direct.

§ 36. And the conviction shall be in the form or to the effect following:—

Form of the conviction.

——— } to wit. } *BE it remembered, that on this* ——— *day of* ———, *in the* ——— *year of the reign of* ———, A. B. *is convicted before* ——— *majesty's justices of the peace for the said county,* [as the case shall happen to be] *of* ——— *for* ——— *and* ———, *do adjudge him, her or them, to pay and forfeit for the same the sum of* ———. *Given under my hand and seal the day and year aforesaid.*

[But by stat. 32 *G.* 2. *c.* 18. § 2. Such of the penalties by the aforesaid act, as thereby are not *particularly* disposed of, shall be distributed as follows: one moiety thereof, where any offender shall be convicted by confession, or oath of one witness, to him who shall inform and prosecute; and the other moiety thereof, and also all penalties and forfeitures incurred on the weighing, trying, or seizure of any bread by any magistrate or justice, shall

be applied for the better carrying the said act into execution, as such magistrate or justice shall think fit.] 31 G. 2. c. 29.

§ 37. No *certiorari* shall be granted to remove any conviction or other proceeding had thereupon. Certiorari.

§ 38. If any person convicted shall think himself aggrieved, he may appeal to the next general or quarter sessions, and the execution shall in such case be suspended; such person convicted entering into recognizance (the said recognizance to be taken by the convicting justice) at the time of the conviction, with two sufficient sureties in double the sum which he shall have been adjudged to forfeit, upon condition to prosecute such appeal with effect, and to be forthcoming to abide the judgment and determination of the justices at the said next general or quarter sessions; who shall finally determine the matter of the said appeal, and award such costs as to them shall appear just and reasonable, to be paid by either party: and if, upon the hearing of the said appeal, the conviction shall be affirmed, the appellant shall immediately pay down the sum adjudged, together with such costs as the justices in their said sessions shall award, to be paid to the prosecutor or informer; and in default of payment thereof, any two such justices, or any one magistrate or justice having jurisdiction in the place to which such appellant shall escape, or where he shall reside, shall, by warrant, commit him to the common gaol of the county, city, division, or place, where he shall be apprehended, until he shall make payment of such penalty, and of the costs and charges which shall be adjudged on the conviction, to the informer: but if the appellant shall be discharged, reasonable costs shall be awarded to him against the informer, who would, in case of such conviction, have been entitled to the penalty; and which costs shall and may be recovered by the appellant against such informer, in like manner as costs given at the sessions are recoverable. Appeal.

§ 39. Provided, that if the conviction shall be within six days before the sessions, the party, on entering into such recognisance as aforesaid, shall be at liberty to appeal, either to the then next or the next following sessions, which shall be held for any such county, riding, &c. or place where such conviction shall have been made.

§ 40. Every action which shall be brought against any magistrate, justice, or peace officer, for any thing done under this act, shall be commenced within six months, and laid in the proper county; and stat. 24 *G.* 2. *c.* 44. shall extend to such magistrate or justice acting under this act. And no action shall be commenced against such peace officer till seven days after notice in writing shall have been given to or left for him at his usual place of abode by the plaintiff's attorney; which notice shall contain the name and place of abode of the person intending to bring such action, and also of his attorney, and likewise the cause of action: and such peace officer may, within the said seven days, tender satisfaction; and if the same is not accepted, the defendant may plead such tender in bar of the action, together with the general issue, or any other plea, with leave of the court: and if the jury shall find the amends tendered to have been sufficient, or if the plaintiff shall be nonsuit, or discontinue, or judgment be given for the defendant upon demurrer, or if the action be brought Indemnity of persons prosecuted for any thing done on this act.

31 G.2. c.29. after the time limited, or not within the proper county, the jury shall find for the defendant, and he shall be entitled to his costs; but if the jury shall find, that no such tender was made, or not sufficient, or shall find against the defendant on any plea pleaded, they shall give a verdict for the plaintiff, and such damages as they shall think proper, and the plaintiff shall thereupon recover his costs against such defendant.

General issue. § 41. And other persons sued for any thing done under this act, may plead the general issue; and if they recover shall have treble costs.

Limitation of prosecution. § 42. Provided always, that no person shall be convicted for any of the aforesaid offences, unless the prosecution be commenced within three days after the offence committed.

Saving of the right of others. § 43, 44, 45. Provided also, that nothing herein shall extend to prejudice any right or custom of the city of *London;* or of the lord of any leet; or clerk of the market; or the dean of *Westminster*, or high steward of *Westminster*, or his deputy; or of the universities.

Observations respecting indemnifying clause. *Note.* — The reason why the indemnifying statute 24 *G.* 2. *c.* 44. is hereby particularly mentioned, seems to be upon the account of such magistrates or chief officers who are empowered to act in setting the assize, and otherwise carrying this act into execution, that are not justices of the peace; as for instance, the court of mayor and aldermen, in most of the boroughs and towns corporate, consisteth of persons some of whom are not justices; and in others, especially the more ancient, not one of them is a justice of the peace (the corporation having been established before there were any justices of the peace in the kingdom): but yet they are enabled specially to proceed in this and in many other instances by act of parliament. Which observation is applicable also to the power herein given to them, to issue precepts, to examine upon oath, and the like; which power is implied in the general office of a justice of the peace, but is not applicable to those others, without special words granting the same. So also it was necessary for the act to be particular with regard to the indemnification of constables and others acting under such warrants; as also of the meal-weighers, clerks of the market, and others appointed to make returns of the price of grain, flour, and the like, who are not under the general protection of the law for their proceedings in these matters, and therefore require an express declaration in the act itself of their authority and privilege in this respect.

III. Where an Assize is not set.

59 G.3. c.36. By stat. 59 *G.* 3. *c.* 36. after reciting the stats. 3 *G.* 3. *c.* 11. the 33 *G.* 3. *c.* 37. and the 41 *G.* 3. U. K. *c.* 12. relating to the making and selling of bread and adulteration of meal; and that "it is expedient that the said recited acts, and all other acts which relate to bread to be sold out of the city of *London*, and the liberties thereof, and beyond the weekly bills of mortality and ten miles of the *Royal Exchange*, where no assize is set, should be repealed, and that other and more effectual provisions should be established for punishing persons who shall adulterate meal, flour, or bread, or who shall sell bread deficient in its due weight, and for better regulating the making and sale of bread within the

limits aforesaid;" it is therefore enacted, "That the said several recited acts of the 3d, 33d, and 41st years of the reign of his present majesty, and all and every other act and acts of parliament which relate to the making and selling of bread, where no assize is set; or the punishment of persons who shall adulterate meal, flour, or bread, or who sell bread deficient in its due weight, so far as respects the bread, meal, and flour, to be made and sold out of the city of *London* and the liberties thereof, and beyond the weekly bills of mortality and ten miles of the *Royal Exchange*, where no assize is set, shall be and the same are repealed."

59 G. 3. c. 36. Recited acts repealed.

By § 2. "It shall be lawful for any person or persons whomsoever, out of the city of *London* and the liberties thereof, and beyond the weekly bills of mortality, and ten miles of the *Royal Exchange*, to make, bake, sell, and expose for sale, any bread made of flour or meal, of wheat, barley, rye, oats, buckwheat, Indian corn, peas, beans, rice, and every other kind of grain whatsoever, and potatoes, or any of them, and with any common salt, pure water, eggs, milk, yeast, barm, leaven, and potatoe yeast, and mixed in such proportions as the makers or sellers of bread shall think fit." (*S. P.* 1 & 2 *G.* 4. *c.* 50. § 2.)

59 G. 3. c. 36. 1 & 2 G. 4. c. 50. Materials with which bread may be made and sold.

By § 3. Although no assize of bread shall be set in pursuance of stat. 53 *G.* 3. *c.* 116. "no loaf or loaves of bread called or deemed assize loaf or loaves, in the tables of the assize and price of bread annexed to the said last-mentioned act enacted and referred to, and the weight of which varies according to the variation in the price of grain, shall be made for sale, sold or carried out for sale, or be offered or exposed to or for sale, or be allowed to be sold, where any loaf or loaves of the bread called or deemed priced loaf or loaves, in the tables of the assize and price of bread, in and by the said act of the 53d year of the reign of his present majesty, enacted and referred to, and the price of which varies according to the variation in the price of grain, shall at the same time be made for sale, or be allowed to be sold (that is to say) no assize loaves of the price of 3*d.*, and priced loaves called *half-quartern loaves*, nor assize loaves of the price of 6*d.*, and priced loaves called *quartern loaves*, nor assize loaves of the price of 12*d.*, and priced loaves called *half-peck loaves*, nor assize loaves of the price of 18*d.*, and priced loaves called *peck loaves*, shall at the same time be made for sale, sold, or carried out for sale, or be offered or exposed to or for sale, or allowed to be sold by any baker or other seller of bread, in his, her, or their shop, dwelling-house, or premises, that unwary persons may not be imposed upon and injured by buying assize loaves referred to in the said tables, as or for priced loaves so referred to in the said tables, or by buying such priced loaves as or for such assize loaves; and every person who shall offend therein, and be convicted of any such offence in manner herein-after mentioned, shall for every such offence forfeit and pay a sum not exceeding 40*s.* nor less than 10*s.*, as the magistrate or magistrates, justice or justices, before whom any such offender or offenders shall be convicted, shall from time to time adjudge and determine." (*S. P.* 1 & 2 *G* 4. *c.* 50. § 3.)

Assize bread and priced bread not to be made at the same time in the same place.

Penalty upon offenders.

By § 4. No person who shall make bread for sale, out of the city of *London* and the liberties thereof, and beyond, &c., nor any journeyman or other servant of any such person, shall at any time

Bakers not to use alum, &c. in making of bread for sale.

59 G.3. c.36.

or times, in the making of bread for sale, put any alum or preparation, or mixture in which alum shall be an ingredient, or any other preparation or mixture in lieu of alum, into the dough of such bread, or in anywise use or cause to be used any alum or any other unwholesome mixture, ingredient, or thing whatsoever in the making of such bread, on any account or under any colour or pretence whatsoever, upon pain that every such person, whether master or journeyman, or other person, who shall knowingly offend in the premises, and shall be convicted of any such offence, either by confession, or oath (or, being of the people called *Quakers*, affirmation) of one witness, shall on every such conviction forfeit and pay any sum of money not exceeding 5*l*., or in default of payment thereof, shall, by warrant under the hand and seal of the magistrate or justice, before whom such offender shall be convicted, be committed to the house of correction, or some prison of the city, county, borough, or place where the offence shall have been committed, or the offender apprehended, there to remain for any time not exceeding six calendar months from the time of such commitment, unless such penalty shall be sooner paid, as any such magistrate or justice shall think fit to order and direct; and it shall be lawful for the magistrate or justice before whom any such offender shall be convicted, to cause the offender's name, place of abode, and offence to be published in some newspaper which shall be printed, published, or circulated in or near the county, division, riding, or district where the offence shall be committed, and to defray the expence out of the money so to be forfeited, if any shall be paid or recovered. (See further stat. 1 & 2 *G*. 3. *c*. 50. § 4. p. 446.)

Penalty for adulterating corn, meal, or flour, whether at the time of grinding, dressing, or bolting, &c. or of selling the meal or flour of one sort of grain for another sort.

By § 5. No person shall knowingly put into corn, meal, or flour which shall be ground, dressed, bolted, or manufactured for sale out of the said city of *London* and the liberties thereof, and beyond the weekly bills of mortality, and 10 miles of the *Royal Exchange*, either at the time of grinding, &c. or at any other time, any ingredient, mixture, or thing whatsoever, or shall knowingly sell, offer, or expose for sale any meal or flour of one sort of grain as or for the meal or flour of any other sort of grain, or any thing as or for or mixed with the meal or flour of any grain, which shall not be the real and genuine meal or flour of the grain the same shall import to be and ought to be, upon pain of forfeiting, on conviction, for every such offence any sum not exceeding 5*l*. at the discretion of the magistrate or justice before whom convicted. (See further stat. 1 & 2 *G*. 4. *c*. 50. § 5. p. 447.)

Loaves made of the meal of any other grain than wheat, to be marked with the letter M. under a penalty for neglect.

By § 6. Every loaf of every sort of bread made of the meal or flour of any other grain than wheat, which shall be made for sale, or be sold, carried out, offered, or exposed for sale, out of the city of *London* and the liberties thereof, and beyond, &c. shall be marked with a large Roman M; and every person who shall make for sale, sell, offer, or expose to or for sale, any loaf of any such sort of bread, which shall not be so marked, shall for every time he, she, or they shall so offend in the premises, and be thereof convicted in manner herein-after directed, forfeit and pay a sum not exceeding 40*s*. for every loaf of such bread which shall not be so marked, as the magistrate or justice, before whom any such person shall be convicted, shall from time to time adjudge and determine. (See further stat. 1 & 2 *G*. 4. *c*. 50. § 6. p. 447.)

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Magistrates or peace officers by their warrants, may search bakers' premises, and if any adulterated flour, bread, &c. be found, it may be seized and disposed of.

By § 7. "It shall be lawful for any magistrate or magistrates, justice or justices of the peace, within the limits of their respective jurisdictions, and also for any peace officer or officers of any parish or place where any miller, mealman, or baker, or other person who shall grind grain, or dress or bolt meal or flour, or make bread for reward or sale, out of the city of *London* and the liberties thereof, and beyond the weekly bills of mortality and ten miles of the *Royal Exchange*, authorised by warrant under the hand and seal or hands and seals of any such magistrate or magistrates, justice or justices, and which warrant any such magistrate or magistrates, justice or justices is and are hereby empowered to grant, at seasonable times in the day, to enter into any house, mill, shop, stall, bakehouse, boltinghouse, pastry warehouse, outhouse, or ground, of or belonging to any miller, mealman, or baker, or other person who shall grind grain or dress or bolt meal or flour, or make bread for reward or sale as aforesaid, and to take with him or them, to his or their assistance, one or more master miller, mealman, or baker, millers, mealmen, or bakers, and to search or examine whether any mixture, ingredient, or thing, not the genuine produce of the grain such meal or flour shall import or ought to be, shall have been mixed up with or put into any meal or flour in the possession of such miller, mealman, or baker, either in the grinding of any grain at the mill, or in the dressing, bolting, or manufacturing thereof, whereby the purity of any meal or flour is or shall be in anywise adulterated, or whether any alum or other ingredient shall have been mixed up with or put into any dough or bread in the possession of any such baker or other person, whereby any such dough or bread is or shall be in anywise adulterated; and also to search for alum or any other ingredient which may be intended to be used in or for any such adulteration or mixture; and if on any such search it shall appear that any such meal, flour, dough, or bread so found, shall have been so adulterated by the person in whose possession it shall then be, or any alum or other ingredient shall be found, which shall seem to have been deposited there, in order to be used in the adulteration of meal, flour, or bread, then, and in every such case, it shall be lawful for such magistrate or magistrates, justice or justices of the peace, or officer or officers authorised as aforesaid respectively, within the limits of their respective jurisdictions, to seize and take any meal, flour, dough, or bread which shall be found in any such search, and deemed to have been adulterated; and all alum and other ingredients and mixtures which shall be found and deemed to have been used or intended to be used in or for any such adulteration as aforesaid, and such part thereof as shall be seized by any peace officers, authorised as aforesaid, shall, with all convenient speed after seizure, be carried to some magistrate or magistrates, justice or justices of the peace, within the limits of whose jurisdiction the same shall have been so seized; and if any magistrate or magistrates, justice or justices, who shall authorise any such seizure to be made in pursuance of this act, or to whom any thing so seized under the authority of this act shall be brought, shall adjudge that any such meal, flour, dough, or bread so seized has been adulterated by any unwholesome or improper mixture or ingredient put therein, or shall adjudge that any alum or other ingre-

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dient or mixture, so found as aforesaid, have been deposited or kept where so found, for the purpose of adulterating meal, flour, or bread, then and in any such case every magistrate or magistrates, justice or justices of the peace, is and are hereby required, within the limits of their respective jurisdictions to dispose of the same as he or they, in his or their discretion, shall from time to time think proper. (*S. P.* stat. 1 & 2 *G.* 4. *c.* 50. § 7.)

Penalty on bakers in whose premises shall be found any ingredients for adulterating flour, &c.

§ 8. Every miller, mealman, or baker, out of the city of *London*, &c. &c. in whose house, mill, shop, stall, bakehouse, bolting-house, pastry warehouse, outhouse, ground, or possession, any alum, or other ingredient or mixture shall be found, which shall be adjudged by any magistrate or justice to have been deposited there, for the purpose of being used in adulterating meal, flour, or bread, shall, on being convicted of any such offence, either by confession, or by the oath or affirmation as aforesaid, of one credible witness, forfeit on every such conviction, any sum not exceeding *5l.*, or in default of payment thereof, shall, by warrant under the hand and seal of the magistrate or justice, before whom such offender shall be convicted, be committed to the house of correction, or some other prison of the city, county or place, where the offence shall have been committed, or the offender apprehended, there to remain for any time not exceeding six calendar months from the time of such commitment, unless such penalty shall be sooner paid, as any such magistrate or justice shall think fit and order; unless the party charged with any such offence shall make it appear to the satisfaction of the magistrate or justice, that such alum or other ingredient or mixture was not nor were brought or lodged, where found or seized, with any design or intent to have been put into any meal, flour, or bread, or to have adulterated therewith the purity of any meal, flour, or bread, but that the same was, where so found or seized, for some other lawful purpose; and it shall be lawful for the magistrate or justice to cause the offender's name, place of abode, and offence to be published in some newspaper which shall be printed, published, or circulated in or near the county, &c. &c. where the said offence shall be committed, and to defray the expence as directed by § 4. (See further 1 & 2 *G.* 4. *c.* 50. § 8. p. 448.)

Obstructing search, or the seizure of any flour, &c. or ingredients to adulterate it.

§ 9. If any person shall wilfully obstruct or hinder any such search, or the seizure of any meal, flour, dough, or bread, or of any alum or other ingredient or mixture found on such search, and deemed to have been lodged with an intent to adulterate the purity or wholesomeness of any meal, flour, dough, or bread, or shall wilfully oppose or resist any such search being made, or the carrying away any such alum or other ingredient or mixture as aforesaid, or any meal, flour, dough, or bread which shall be seized as being adulterated, or as not being made pursuant to this act, he, she, or they so doing or offending in any of the cases last aforesaid, shall for every such offence, on being convicted thereof, forfeit and pay such sum, not exceeding 40*s.*, nor less than 20*s.*, at the discretion of the magistrate or justice before whom such offender shall be convicted. (See further stat. 1 & 2 *G.* 4. *c.* 50. § 8. p. 448.)

Penalty.

[§ 10. as to *weight* of bread, is repealed by stat. 1 & 2 *G.* 4. *c.* 50. § 1. p. 446.]

Baking on Sundays.

§ 12. No master, mistress, journeyman, or other person respectively, exercising or employed in the trade or calling of a baker

out of the city of *London* and the liberties thereof, and beyond, &c. &c. shall, on the Lord's Day, commonly called *Sunday*, or any part thereof, make or bake any household or other bread, rolls, or cakes of any sort or kind, or shall on any part of the said day sell or expose to sale, or permit or suffer to be sold or exposed to sale, any bread, rolls, or cakes of any sort or kind, except to travellers, or in cases of urgent necessity; or bake or deliver, or permit or suffer to be baked or delivered, any meat, pudding, pie, tart, or victuals, at any time after half-past one of the clock in the the afternoon of that day, or in any other manner exercise the trade or calling of a baker, or be engaged or employed in the business or occupation thereof; except as aforesaid, and also save and except so far as may be necessary in setting and superintending the sponge to prepare the bread or dough for the following day's baking; and no meat, pudding, pie, tart, or victuals shall be brought to or taken from any bakehouse during the time of divine service in the church, parish, hamlet, or place where the same is situate, nor within one quarter of an hour of the time of commencement thereof; and every person offending against the foregoing regulations, or any one or more of them, and being thereof convicted before any magistrate or justice of the city, county, or or place where the offence shall be committed, within two days from the commission thereof, either upon the view of such magistrate or justice, or on confession, or proof by one or more witness upon oath or affirmation as aforesaid, shall for every such offence forfeit and pay, and undergo the forfeiture, penalty, and punishment hereinafter mentioned; (that is to say), for the first offence the penalty of 5*s*., for the second offence the penalty of 10*s*., and for every third and subsequent offence respectively, the penalty of 20*s*.; and shall, moreover, on every such conviction, pay the costs and expences of the prosecution, to be settled by the magistrate or justice convicting; and the amount thereof, together with such part of the penalty as such magistrate or justice shall think proper, to the prosecutor or prosecutors for loss of time in instituting and following up the prosecution, at a rate not exceeding 3*s*. *per diem*, and be paid to the prosecutor or prosecutors for his and their own use and benefit; and the residue of such penalty to be paid to such magistrate or justice, and within seven days after his receipt thereof, to be transmitted by him to the churchwardens or overseers of the parish or parishes where the offence shall be committed, to be applied for the benefit of the poor thereof: and in case the whole amount of the penalty and of the costs and expenses as aforesaid, be not paid within three days after the conviction of the offender or offenders, such magistrate or justice shall and may, by warrant under his hand and seal, direct the same to be levied and raised by distress and sale of the goods and chattels of the offender or offenders; or in default or insufficiency of such distress, commit the offender or offenders to the house of correction, on a first offence for any time not exceeding 14 days, and on the second or any subsequent offence, for any time not exceeding 21 days, unless the whole of the penalty, costs, and expences be sooner paid. (*S. P.* stat. 1 & 2 *G.* 4. *c.* 50. § 11.)

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Exception for setting and superintending sponge.

Penalty.

Recovery and application thereof.

§ 13. No person who shall follow or be concerned in the business of a miller, mealman, or baker, shall be capable of acting or

No miller, mealman, or

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baker, may act as a justice of the peace in the execution of this act, on penalty of 50*l.*

shall be allowed to act as a magistrate or justice of the peace under this act, or in putting in execution any of the powers in or by this act granted, on pain of forfeiting the sum of 50*l.* to any person who shall sue for the same, in any of H. M.'s courts of record at *Westminster*. (See further provision, stat. 1 & 2 G.4. c. 50. § 12.)

All offences against this act may be heard in a summary way by magistrates within their respective jurisdictions.

§ 14. And for the better and more easy recovery of the several penalties and forfeitures to be incurred under this act, and the powers herein contained; it is further enacted, that it shall be lawful for the mayor, or any alderman of any city, and to and for any other of H. M.'s justices of the peace, or any of them within their respective counties, divisions, cities, towns corporate, liberties or jurisdictions beyond the city of *London* and the liberties thereof, and beyond, &c. to hear and determine in a summary way, all offences committed against the true intent and meaning of this act, and for that purpose to summon before them or any of them, within their respective jurisdictions, any party or parties accused of being an offender or offenders against the true intent and meaning of this act; and in case the party accused shall not appear on such summons, or offer some reasonable excuse for his default, then upon oath or affirmation as aforesaid, by any credible witness, of any offence committed contrary to the true intent and meaning of this act, any such magistrate or justice shall issue his warrant for apprehending the offender or offenders within the jurisdiction of any such magistrate or justice; and upon the appearance of the party or parties accused, or in case he, she, or they, shall not appear on notice being given to, or left for him, her, or them, at his, her, or their usual place of abode, or if he, she, or they cannot be apprehended on a warrant granted against him, her, or them, as is hereinbefore directed, then and in every such case any such magistrate or justice is and are hereby authorised and required to proceed to make inquiry touching the matters complained of, and to examine any witness who shall be offered on either side, on oath or affirmation as aforesaid, and which oath and affirmation every such magistrate and justice is and are hereby authorised, empowered, and required to administer, and after hearing the parties who shall appear, and the witnesses who shall be offered on either side, such magistrate or justice shall convict or acquit the party or parties accused: and if the penalty or money forfeited on any such conviction, shall not be paid within the space of 24 hours after any such conviction, every such magistrate or justice shall thereupon issue a warrant under his hand and seal, directed to any peace officer or officers within their respective jurisdictions, and thereby require him or them to make distress of the goods or chattels of the offender or offenders within such their respective jurisdictions, to satisfy such penalty or money forfeited, and the costs of the prosecution and distress; and if any offender should convey away his goods out of the jurisdiction of any such magistrate or justice before whom he or she was convicted, or so much thereof that the penalty or money forfeited cannot be levied, then some magistrate or justice within whose jurisdiction the offender shall have removed his goods, shall back the warrant granted by any such magistrate or justice as aforesaid, and thereupon the penalty forfeited shall be levied on the offender's goods and chattels by distress and sale; and if within five days from the distress being

Penalties may be levied by distress and sale.

taken, the penalty or money forfeited and costs shall not be paid, the goods seized shall be appraised and sold, rendering the overplus, if any, after deducting the penalty or forfeitures, and the costs and charges of the prosecution, distress, and sale, to the owner or owners thereof, which charges shall be ascertained by the magistrate or justice before whom any such offender or offenders shall have been so convicted, or by the magistrate or justice who backed the warrant, if then alive, and if not, by some other magistrate or justice of the city, county, division, or place in which the offender shall have been convicted, on application for that purpose to be made to any such magistrate or justice; and for want of such distress, then every such magistrate or justice within whose respective jurisdiction any such offender or offenders shall reside or be, shall, on the application of any prosecutor or prosecutors, and proof on oath or affirmation as aforesaid, made of the conviction and non-payment of the penalty and charges, by warrant under his hand and seal commit every such offender or offenders to the common gaol or house of correction of the city, county, division, or place, where such offender or offenders shall be found, there to remain for the space of one calendar month from the time of such commitment, unless after such commitment payment shall be made of the said penalty or forfeiture, and costs and charges, before the expiration of the said one calendar month; and all such penalties and forfeitures when recovered, shall be paid, one half to the informer, and the other half shall be paid to the magistrate or justice, and within seven days after his or their receipt thereof, be transmitted by him or them to the churchwardens or overseers of the parish or parishes where the offence shall be committed, to be applied for the benefit of the poor thereof. (*S. P.* 1 & 2 *G.* 4. *c.* 50. § 13.)

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§ 15. If it shall be made out by the oath (or affirmation as aforesaid) of any credible person to the satisfaction of any magistrate or justice, that any person within his jurisdiction is likely to give or offer material evidence on behalf of the prosecutor of any offender against this act, or on behalf of the person accused, and will not voluntarily appear before such magistrate or justice, to be examined and give evidence upon oath or affirmation as aforesaid concerning the premises, every such magistrate or justice is and are hereby authorised and required to issue his summons to convene every such witness and witnesses before him, at such seasonable time or times as in such summons shall be fixed; and if any person so summoned shall neglect or refuse to appear, after having been paid or tendered a reasonable sum for his, her, or their costs, charges, and expences, at the time by such summons appointed, and no just excuse shall be offered for such neglect or refusal, then after proof upon oath or affirmation as aforesaid, of such summons having been duly served upon the party or parties so summoned, every such magistrate and justice is hereby authorised and required to issue his warrant to bring every such person before him: and on the appearance of any such person every such magistrate or justice is hereby authorised and empowered to examine upon oath (or affirmation) every such witness; and if any such person on appearance, shall refuse to be examined upon oath, (or affirmation,) concerning the premises, without offering any just excuse for such refusal, any such magistrate or justice

Power to summon and compel the attendance of witnesses.

Persons refusing may be committed for any time not exceeding 14 days.

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may, by warrant under his hand and seal, or their hands and seals, commit any person so refusing to be examined to the public prison of the city, county, &c. in which the person so refusing to be examined shall be, there to remain for any time not exceeding fourteen days, as any such magistrate or justice shall direct.

Persons forswearing themselves guilty of perjury.

§ 16. If any person shall take any oath, (or affirmation,) by this act directed, and shall wilfully forswear or shall falsely affirm himself or herself, every such person shall be liable to be prosecuted for perjury by indictment or information, according to due course of law; and if convicted shall be subject to the like pains and penalties which persons convicted of wilful and corrupt perjury are subject to. (*S. P.* stat. 1 & 2 *G.* 4. *c.* 50. § 15.)

§ 17. Every conviction to be drawn up in the form or to the effect following, that is to say,

Form of conviction.

——— to wit. } *BE it remembered, that on this ——— day of ———, in the ——— year of the reign of his present majesty,* A. B. *is convicted before ——— majesty's justices of the peace for the said county of ———*, or, *for the ——— division of the said county of ———*, or, *for the city, liberty,* or *town,* [as the case may be] *for ———, and do adjudge him, her,* or *them* [as the case may be] *to forfeit and pay for the same the sum of ———. Given under ——— hand and seal the day and year aforesaid.* [See stat. 1 & 2 *G.* 4. *c.* 50. § 16. p. 444.]

Conviction not removable.

§ 18. And no *certiorari,* letters of advocation or of suspension, shall be granted to remove any conviction or other proceedings on this act.

Appeal.

§ 19. Any person aggrieved by the judgment of the magistrate or justice before whom he, she, or they shall have been convicted, may appeal to the justices at the next general or general quarter sessions of the peace, which shall be held for the city, county, &c. or place where such judgment shall have been given, and the execution of such judgment shall in such case be suspended, the person so convicted entering into a recognizance at the time of such conviction, or within twenty-four hours after the same shall be made, with two sufficient sureties, in double the sum which such person shall have been adjudged to forfeit, upon condition to prosecute such appeal with effect, and to be forthcoming to abide the judgment and determination of the justices at their said next general or general quarter sessions; which recognizance the magistrate or justice, before whom such conviction shall be made, is and are hereby empowered and required to take; and the justices in the said general or general quarter sessions are hereby authorised and required to hear and finally determine the matter of every such appeal, and to award such costs as to them shall appear just and reasonable to be paid by either party; and if upon hearing the said appeal, the judgment of the magistrate or justice shall be confirmed, such appellant shall within twenty-four hours afterwards, pay the sum he, she, or they shall have been adjudged to have forfeited, together with such costs as the sessions shall award to be paid to the prosecutor or informer; and in default any two justices, or any one magistrate or justice of the peace, having jurisdiction in the place into which any such appellant shall escape, or where he shall reside, shall and may by warrant, &c. commit every such appellant to the common gaol of the city,

Costs.

Commitment.

county, &c. where he shall be apprehended, until he shall pay such penalty and costs; but if the appellant or appellants in any such appeal shall make good his, her, or their appeal, and be discharged of the said conviction, reasonable costs shall be awarded to the appellant or appellants against such informer or informers, who would (in case of such conviction) have been entitled to a moiety of the penalty to have been recovered as aforesaid, and which costs shall and may be recovered by the appellant or appellants against any such informer or informers, in like manner as costs given at any general or general quarter sessions are recoverable; provided always, that no person shall be detained in prison for any such offence for a greater length of time than six calendar months. (See further 1 & 2 *G.* 4. *c.* 50. § 18. p. 445.)

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§ 20. If any such conviction shall be made within six days before any general or general quarter sessions of the peace shall be held for the city, county, &c. where such conviction shall have been made, then the party aggrieved by any such conviction may, on entering into recognizance in manner before directed, appeal either to the then next or next following general or general quarter sessions of the peace which shall be held for any such county, division, city, &c. where any such conviction shall have been made. (*S. P.* stat. 1 & 2 *G.* 4. *c.* 50. § 19.)

If conviction happen to be within six days of the sessions, appeal may then be made to the sessions following.

§ 21. Every action or suit which shall be brought or commenced against any magistrate or justice, or any peace officer, for any matter or thing done or committed by virtue of this act, shall be commenced within six *calendar* months after the fact committed, and shall be laid or brought in the city, county, or place where the matter in dispute shall arise, and not elsewhere; and the stat. 24 *G.* 2. *c.* 44., (Vol. III. p. 169.) so far as the said act relates to the rendering the justices more safe in the execution of their office, shall extend and be construed to extend to the magistrate and justice acting under the authority or in pursuance of this act; and no action or suit shall be had or commenced against, nor shall any writ be issued out or copy of any writ be served upon any peace officer or officers, for any thing done in the execution of this act, until *seven* days after notice in writing shall have been given to or left for him or them at his or their usual place of abode, by the attorney for the party intended to commence such action; which notice in writing shall contain the name and place of abode of the person intending to bring such action, and also of his attorney, and likewise the cause of action or complaint; and any peace officer or officers shall be at liberty and may by virtue of this act, at any time within seven days after any such notice shall have been given to or left for him, tender or cause to be tendered any sum or sums of money, as amends for the injury complained of, to the party complaining, or to the attorney named in such notice; and if the same is not accepted of, the defendant in any such action may plead such tender in bar of such action together with the general issue, or any other plea, with leave of the court in which the action shall be commenced; and if upon issue joined on such tender, the jury shall find amends tendered to have been sufficient, they shall find a verdict for the defendant; and in every such case, or if the plaintiff shall become nonsuit, or discontinue his action, or if judgment shall be given for the defendant upon demurrer, or if any action or

Limitation of actions against justices or peace officers.

59 G. 3. c. 36. suit shall be brought after the time limited by this act for bringing the same, or shall be brought in any other county or place than as aforesaid, then and in every such case, the jury shall find a verdict for the defendant, and the defendant shall be entitled to his costs; but if the jury shall find that no such tender was made, or that the amends tendered were not sufficient, or shall find against the defendant, or any plea or pleas by him pleaded, they shall then give a verdict for the plaintiff, and such damages as they shall think proper; and the plaintiff shall thereupon recover his costs against every such defendant. (See a nearly similar provision, 1 & 2 *G.* 4. *c.* 50. § 20. *post*, p. 451.)

Limitation of other actions. Treble costs.

§ 22. The defendant in every such action may plead the general issue, and give this act and the special matter in evidence; and if he succeeds he shall have treble costs. (*S. P.* 1 & 2 *G.* 4. *c.* 50. § 21.)

Persons convicted under this act not liable to other prosecution.

§ 23. No person shall be convicted of any offence under this act, unless the information shall be exhibited within fourteen days after the offence committed (except in cases of perjury); and no person who shall be prosecuted to conviction for any offence against this act, shall be liable to be prosecuted for the same offence under any other law. (*S. P.* 1 & 2 *G.* 4. *c.* 50. § 22.)

Application of penalties.

§ 24. All penalties and forfeitures, the application of which is not herein-before directed, shall be disposed of in manner following; one moiety thereof, where any offender shall be convicted by confession, or by the oath, or affirmation, of a witness or witnesses, shall be paid to the person or persons who shall inform against and prosecute to conviction; and the other moiety, or if there be no such person informing, then the whole thereof, shall be paid to the churchwardens and overseers of the poor of the parish, or parishes, for the use of the poor of the parish wherein such offence shall be committed, in such manner as the said churchwardens and overseers of the poor shall in his or their discretion think fit. *S. P.* 1 & 2 *G.* 4. *c.* 50. § 23.

Saving the rights of the Universities.

By § 25. the ancient rights or customs of the two universities of *Oxford* or *Cambridge* are saved. *S. P.* 1 & 2 *G.* 4. *c.* 50. § 24.

§ 27. This act deemed a public act.

1 & 2 G. 4. c. 50.

By stat. 1 & 2 *G.* 4. *c.* 50. § 1. after reciting stat. 59 *G.* 3. *c.* 36. and that "it is deemed expedient that the said act, so far as the same relates to the *weight* of bread, and to the punishment of bakers or sellers of bread, who shall sell the same *deficient in its due weight*, should be repealed, and that more effectual provisions should be established for punishing persons who shall adulterate meal, flour, or bread, it is enacted, that the said recited act, so far as the same relates to the *weight* of bread, (*e. g.* § 10.) and *to the punishment of bakers or sellers of bread who shall sell the same deficient in its due weight*, shall be repealed." (§ 2, 3. of stat. 1 & 2 *G.* 4. *c.* 50. are similar to § 2, 3. of stat. 59 *G.* 3. *c.* 36. *ante*, p. 437, 438.)

Certain parts of 59 G. 3. c. 36. repealed.

Bakers not to use alum, &c. in making of bread for sale.

§ 4. No person or persons making or who shall make bread for sale out of the city of *London* and the liberties thereof, and beyond the weekly bills of mortality and ten miles of the *Royal Exchange*, nor any journeyman or other servant of any such person or persons as last mentioned, shall at any time or times, in the making of bread for sale, put any alum, or preparation or mixture in which alum shall be an ingredient, or any other preparation or mixture in lieu of alum, into the dough of such bread, or in anywise use

or cause to be used any alum, or any other unwholesome mixture, ingredient, or thing whatsoever, in the making of such bread, or on any account, or under any colour or pretence whatsoever, upon pain that every such person, whether master or journeyman, or other person, who shall knowingly offend in the premises, and shall be convicted of any such offence, either by his, her, or their own confession, or upon the oath (or, being of the people called *Quakers*, affirmation) of one or more witness or witnesses, shall on every such conviction forfeit any sum of money not exceeding 20*l.*, nor less than 5*l.*, or in default of payment thereof, shall, by warrant under the hand and seal of the magistrate or justice before whom such offender shall be convicted, be committed to the house of correction or some prison of the city, county, borough, or place where the offence shall have been committed, or the offender or offenders shall be apprehended, there to remain for any time not exceeding twelve nor less than three calendar months from the time of such commitment, unless such penalty shall be sooner paid, as any such magistrate or justice shall think fit to order and direct; and it shall be lawful for the magistrate or justice before whom any such offender shall be convicted, to cause the offender's name, place of abode, and offence to be published in some newspaper which shall be printed, published, or circulated in or near the county, division, riding, or district where the offence shall be committed, and to defray the expence of publishing the same out of the money to be forfeited as last mentioned, if any shall be paid or recovered.

1 & 2 G. 4. c. 50.

Penalty.

§ 5. No person shall knowingly put into corn, meal, or flour, which shall be ground, dressed, bolted, or manufactured for sale out of the said city of *London* and the liberties thereof, and beyond the weekly bills of mortality and ten miles of the *Royal Exchange*, either at the time of grinding, dressing, bolting, or in anywise manufacturing the same, or at any other time or times, any ingredient, mixture, or thing whatsoever, or shall knowingly sell, offer or expose to or for sale, any meal or flour of one sort of grain, as or for the meal or flour of any other sort of grain, or any thing as or for or mixed with the meal or flour of any grain which shall not be the real and genuine meal or flour of the grain the same shall import to be and ought to be, upon pain that every person who shall offend in the premises, and shall be thereof convicted in manner herein-after mentioned, shall forfeit for every such offence any sum not exceeding 20*l.*, nor less than 5*l.*, as the magistrate or justice, before whom any such offender shall be convicted, shall think fit, or order and direct.

Adulterating corn, meal, or flour, &c.

Penalty.

§ 6. Every loaf of every sort of bread, made of the meal or flour of any other grain than wheat, which shall be made for sale, or be sold, carried out, offered, or exposed in anywise to or for sale, out of the city of *London* and the liberties thereof, and beyond the weekly bills of mortality and ten miles of the *Royal Exchange*, shall be marked with a large Roman (M); and every person who shall make for sale, sell, offer or expose to or for sale, any loaf of any such sort of bread, which shall be made of the meal or flour of any other grain than wheat, which shall not be marked as herein-before directed, shall for every time he, she, or they shall so offend in the premises, and be thereof convicted in manner herein-after directed, forfeit a sum not exceeding 40*s.* nor

Loaves made of the meal of any other grain than wheat, to be marked with the letter (M).

Penalty.

1&2 G. 4. c. 50.

less than 10*s*. for every loaf of such bread which shall not be so marked, as the magistrate or justice, before whom any such person shall be convicted, shall from time to time adjudge and determine.

§ 7. of stat. 1 & 2 *G.* 4. *c.* 50. is similar to § 7. of 59 *G.* 3. *c.* 36. *ante*, p. 439.

Penalty on baker, with whom ingredients for adulteration shall be found.

§ 8. Every miller, mealman, or baker out of the city of *London* and the liberties thereof, and beyond the weekly bills of mortality and 10 miles of the *Royal Exchange*, in whose house, mill, shop, stall, bakehouse, bolting house, pastry warehouse, outhouse, ground, or possession, any alum or other ingredient or mixture shall be found, which shall, after due examination, be adjudged by any magistrate or justice to have been deposited there for the purpose of being used in adulterating meal, flour, or bread, shall, on being convicted of any such offence, either by his, her, or their own confession, or by the oath or affirmation as aforesaid of one or more credible witness or witnesses, forfeit on every such conviction any sum of money not exceeding 20*l*., nor less than 5*l*., or in default of payment thereof shall, by warrant under the hand and seal of the magistrate or justice, before whom such offender shall be convicted, be committed to the house of correction, or some other prison of the city, county, or place where the offence shall have been committed, or the offender or offenders shall be apprehended, there to remain for any time not exceeding 12 nor less than three calendar months from the time of such commitment, unless such penalty shall be sooner paid, as any such magistrate or justice shall think fit and order; unless the party or parties charged with any such offence shall make it appear to the satisfaction of the magistrate or justice, before whom any such alum or other ingredient or mixture shall be brought, that such alum or other ingredient or mixture was not nor were brought or lodged where the same was or were found or seized with any design or intent to have been put into any meal, flour, or bread, or to have adulterated therewith the purity of any meal, flour, or bread, but that the same was or were in the place or places in which the same shall have been so found or seized as aforesaid, for some other lawful purpose; and it shall be lawful for the magistrate or justice, before whom any such offender shall be convicted, to cause the offender's name, place of abode, and offence to be published in some newspaper which shall be printed, published, or circulated in or near the county, division, riding, or district where the said offence shall be committed, and to defray the expense of publishing the same out of the money to be forfeited as last mentioned, if any shall be paid or recovered.

Not exceeding 20*l*. nor less than 5*l*.

Obstructing search for adulterated meal, &c.

§ 9. If any person or persons shall wilfully obstruct or hinder any such search as herein-before is authorised to be made, or the seizure of any meal, flour, dough, or bread, or of any alum or other ingredient or mixture, which shall be found on any such search, and deemed to have been lodged with an intent to adulterate the purity or wholesomeness of any meal, flour, dough, or bread, or shall wilfully oppose or resist any such search being made, or the carrying away any such alum or other ingredient or mixture as aforesaid, or any meal, flour, dough, or bread, which shall be seized as being adulterated, or as not being made pursuant to this act, he, she, or they so doing or offending in any of the cases last aforesaid, shall for every such offence, on being

convicted thereof, forfeit such sum not exceeding *5l.*, nor less than *50s.*, as the magistrate or justice, before whom such offender or offenders shall be convicted, shall think fit and order and direct.

1&2 G.4. c.50. Penalty.

§ 10. Every baker and seller of bread shall cause to be fixed in some convenient part of his or her shop, a beam and scales, with proper weights, in order that every person or persons who may purchase any bread of any such baker or seller of bread, may, if he, she, or they shall think proper, require the same to be weighed in his, her, or their presence; and if any baker or seller of bread, out of the city of *London* and the liberties thereof, and beyond the weekly bills of mortality, and 10 miles of the *Royal Exchange*, shall neglect to fix such beam and scales in some convenient part of his or her shop, or to provide and keep for use proper weights, or whose weights shall be deficient in their due weight, or who shall refuse to weigh any bread purchased in his or her shop, in the presence of the party or parties requiring the same, he, she, or they shall, for every such offence, forfeit a sum not exceeding *5l.*, nor less than 20s., as the magistrate or justice, before whom such offender shall be convicted, shall order and direct.

Bakers shall keep proper weights.

Penalty.

§ 11. Containing regulations as to baking on *Sundays*, is similar to stat. 59 *G.* 3. *c.* 36. § 12. *ante*, p. 440.

§ 12. "No person who shall be concerned in the business of a miller, mealman, or baker, corn merchant, or dealer in corn or flour, shall be capable of acting or shall be allowed to act as a magistrate or justice of the peace under this act, or in putting in execution any of the powers in or by this act granted; and if any miller, mealman, or baker shall presume so to do, he or they so offending in the premises, shall for every such offence forfeit and pay the sum of 50*l.* to any person or persons who shall inform or sue for the same, to be recovered in any of H. M.'s courts of record at *Westminster*, by action of debt, bill, plaint, or information, wherein no essoign, wager of law, or more than one imparlance shall be allowed." (See stat. 59 *G.* 3. *c.* 36. § 13. p. 441.)

No miller or baker may act as justice in the execution of this act.

§ 13. Enacting that all offences against this act may be heard in a summary way, is similar to stat. 59 *G.* 3. *c.* 36. § 14. *ante*, p. 442.

§ 14. As to power to compel attendance of witnesses, is similar to stat. 59 *G.* 3. *c.* 36. § 14. p. 442.

§ 15. Is similar to stat. 59 *G.* 3. *c.* 36. § 16. p. 444.

§ 16. "The magistrate or magistrates, justice or justices, before whom any person or persons shall be convicted in manner prescribed by this act, shall cause every such conviction to be drawn up in the form or the effect following; (that is to say,)

Form of conviction.

——— } to wit. } *BE it remembered, that on this* ——— *day of* ——— *in the* ——— *year of the reign of his present majesty,* A. B. *is convicted before* ——— *majesty's justices of the peace for the said county of* ——— or, *for the* ——— *division of the said county of* ——— or, *for the city, liberty, or town* [as the case may be] *for* ——— *and do adjudge him, her, or them,* [as the case may be] *to forfeit and pay for the same the sum of* ———. *Given under* —— *hand and seal, the day and year aforesaid.*" [See stat. 59 *G.* 3. *c.* 36. § 16. p. 444.]

§ 17. "No certiorari, letters of advocation, or of suspensation *, shall be granted, to remove any conviction or other proceedings

* *Sic.*

Conviction not removeable.

1&2G.4. c.50. had thereon in pursuance of this act." (See stat. 59 *G.* 3. *c.* 36. § 18. *S. P.*)

Appeal to quarter sessions.

§ 18. If any person or persons convicted of any offence punishable by this act, shall think him, her, or themselves aggrieved by the judgment of the magistrate, or justice before whom he, she, or they shall have been convicted, such persons shall have power from time to time to appeal to the justices at the next general or general quarter sessions of the peace which shall be held for the city, county, division, liberty, town, or place where such judgment shall have been given, and the execution of such judgment shall in such case be suspended, the person so convicted entering into a recognizance at the time of such conviction, or within 24 hours after the same shall be made, with two sufficient sureties, in double the sum which such person shall have been adjudged to pay or forfeit, upon condition to prosecute such appeal with effect, and to be forthcoming to abide the judgment and determination of the justices at their said next general or quarter sessions; which recognizance the magistrate or justice before whom such conviction shall be made, is hereby empowered and required to take; and the justices in the said general or general quarter sessions are hereby authorised and required to hear and finally determine the matter of every such appeal, and to award such costs as to them shall appear just and reasonable to be paid by either party; and if, upon hearing the said appeal, the judgment of the magistrate or justice before whom the appellant or appellants shall have been convicted, shall be confirmed, such appellant or appellants shall immediately, or within 24 hours afterwards, pay down the sum he, she, or they shall have been adjudged to have forfeited, together with such costs as the said justices in their said general or general quarter sessions shall award to be paid to the prosecutor or informer, for defraying the expenses sustained by reason of any such appeal; and in default of the appellant's paying the same, any two justices, or any magistrate or justice of the peace having jurisdiction in the place into which any such appellant or appellants shall escape, or where he, she, or they shall reside, shall and may, by warrant under their hands and seals or his hand and seal, commit any such appellant or appellants to the common gaol of the city, county, division, or place where he, she, or they shall be apprehended, until he, she, or they shall make payment of such penalty, and of the costs and charges which shall be adjudged on the conviction; but if the appellant or appellants in any such appeal shall make good his, her, or their appeal, and be discharged of the said conviction, reasonable costs shall be awarded to the appellant or appellants against such informer or informers who would (in case of such conviction) have been entitled to a moiety of the penalty to have been recovered as aforesaid; and which costs shall and may be recovered by the appellant or appellants against any such informer or informers, in like manner as costs given at any general or general quarter sessions are recoverable: Provided always, that no person shall be detained in prison for any such offence for a greater length of time than two calendar months.

Costs.

§ 19. As to appeal to the session following the *next* sessions, is similar to stat. 59 *G.* 3. *c.* 36. § 20. *ante*, p. 445.

§ 20. Every action or suit which shall be brought or commenced against any magistrate or justice, or any peace officer or officers, for any matter or thing done or committed by virtue of or under this act, shall be commenced within *six months* after the fact committed and not afterwards. (The rest of this section is similar to stat. 59 *G.* 3. *c.* 36. § 21. p. 445.)

1 & 2 G. 4. c. 50. Limitation of actions.

The provisions in § 21, 22, 23, and 24., are similar to those in § 22, 23, 24, 25. of 59 *G.* 3. *c.* 36. *ante*, p. 445, 446.

§ 25. "This act shall take effect after one calendar month from the passing thereof (8th *June* 1821)."

Commencement of act.

§ 26. "This shall be deemed a public act," &c.

Public act.

IV. Of Standard Wheaten Bread.

By stat. 13 *G.* 3. *c.* 62. § 1. reciting that whereas by stats. 31 *G.* 2. *c.* 29. and 3 *G.* 3. *c.* 11. only two sorts of bread made of wheat are allowed to be made for sale, that is to say, wheaten and household; and whereas according to the ancient order and custom of the realm there hath been from time immemorial a STANDARD WHEATEN BREAD, being the whole produce of the wheat whereof it was made: it is therefore enacted, that from henceforth a bread made of the flour of wheat, which flour, without any mixture or division, shall be the whole produce of the grain, the bran or hull thereof only excepted, and which shall weigh three-fourth parts of the weight of the wheat whereof it shall be made, may be made and sold, and shall be called and understood to be a *standard wheaten bread*.

13 G. 3. c. 62. Concerning standard wheaten bread.

And by § 2. the maker shall mark every loaf thereof with the capital letters S. W., and the same shall be made and sold, although no assize be set, of the weight and in the proportions following: viz. That every standard wheaten peck loaf shall weigh 17 lb. 6 oz. avoirdupois; every half-peck loaf 8 lb. 11 oz.; and every quartern loaf 4 lb. 5½ oz.: and every peck loaf, half-peck loaf, and quartern loaf shall always be sold as to price in proportion to each other respectively: and that where wheaten and household bread, made as the law now directs, shall be sold at the same time, together with this standard wheaten bread, they be sold in respect of and in proportion to each other as followeth: namely, that the same weight of wheaten bread, which costs 8*d.*, the same weight of this standard wheaten bread shall cost 7*d.*, and the same weight of household bread shall cost 6*d.* or seven standard wheaten assized loaves shall weigh equal to eight wheaten assized loaves, or to six household assized loaves of the same price, as near as may be.

Weight.

Proportion of the different kinds of bread, as to weight.

§ 3. Provided, that the said standard wheaten bread shall not be made into or exposed to sale as prize loaves, at one and the same time, together with assized loaves of the same standard wheaten bread.

And the magistrates may, whenever they think proper, fix the assize of this standard wheaten bread, according to the following tables:—

TABLE I.

13 G.3. c.62.

Or the Assize Table of Standard Wheaten Bread.

Note. — This table is framed for bread to be made of the whole produce of the wheat, except the bran or hull thereof only: the said produce to weigh three-fourths of the wheat whereof it is made.

The first column contains the price of the bushel of wheat, Winchester measure, from 2*s.* 9*d.* to 14*s.* 6*d.* the bushel, the allowance of the magistrates to the baker included: the other columns contain the *weight* of the several loaves.

Price of the bushel of wheat and baking.		Small Bread.					Large Assize Bread.								
		Penny.		Two Pence.			Sixpence.			Twelve Pence.			Eighteen Pence.		
s.	*d.*	*oz.*	*dr.*	*lb.*	*oz.*	*dr.*	*lb.*	*oz.*	*dr.*	*lb.*	*oz.*	*dr.*	*lb.*	*oz.*	*dr.*
2	9	25	4	3	2	9	9	7	11	18	15	5	28	7	0
3	0	23	3	2	14	5	8	11	0	17	6	1	26	1	1
3	3	21	6	2	10	12	8	0	5	16	0	11	24	1	0
3	6	19	14	2	7	12	7	7	3	14	14	5	22	5	8
3	9	18	9	2	5	1	6	15	4	13	14	7	20	13	11
4	0	17	6	2	2	12	6	8	4	13	0	9	19	8	13
4	3	16	6	2	0	11	6	2	2	12	4	4	18	6	7
4	6	15	7	1	14	4	5	12	11	11	9	6	17	6	1
4	9	14	10	1	13	4	5	7	13	10	15	10	16	7	7
5	0	13	14	1	11	13	5	3	7	10	6	13	15	10	4
5	3	13	4	1	10	8	4	15	7	9	14	14	14	14	5
5	6	12	10	1	9	4	4	11	13	9	7	11	14	3	8
5	9	12	1	1	8	3	4	8	9	9	1	1	13	9	10
6	0	11	9	1	7	3	4	5	8	8	11	1	13	0	9
6	3	11	2	1	6	4	4	2	12	8	5	8	12	8	3
6	6	10	11	1	5	6	4	0	3	8	0	5	12	0	8
6	9	10	5	1	4	10	3	13	13	7	11	9	11	9	6
7	0	9	15	1	3	14	3	11	9	7	7	3	11	2	12
7	3	9	9	1	3	3	3	9	8	7	3	1	10	12	9
7	6	9	4	1	2	9	3	7	10	6	15	4	10	6	13
7	9	9	0	1	1	15	3	5	13	6	11	10	10	1	7

13 G.3. c.62.

Price of the bushel of wheat and baking.		Small Bread.					Large Assize Bread.								
		Penny.		Two Pence.			Sixpence.			Twelve Pence.			Eighteen Pence.		
s.	*d.*	*oz.*	*dr.*	*lb.*	*oz.*	*dr.*	*lb.*	*oz.*	*dr.*	*lb.*	*oz.*	*dr.*	*lb.*	*oz.*	*dr.*
8	0	8	11	1	1	6	3	4	2	6	8	4	9	12	7
8	3	8	7	1	0	14	3	2	9	6	5	2	9	7	11
8	6	8	3	1	0	6	3	1	1	6	2	2	9	3	3
8	9	7	15	0	15	14	2	15	11	5	15	5	8	15	0
9	0	7	12	0	15	7	2	14	5	5	12	11	8	11	0
9	3	7	8	0	15	0	2	13	1	5	10	3	8	7	4
9	6	7	5	0	14	10	2	11	14	5	7	13	8	3	11
9	9	7	2	0	14	4	2	10	12	5	5	9	8	0	5
10	0	6	15	0	13	14	2	9	11	5	3	7	7	13	2
10	3	6	13	0	13	9	2	8	11	5	1	6	7	10	1
10	6	6	10	0	13	4	2	7	12	4	15	7	7	7	3
10	9	6	7	0	12	15	2	6	13	4	13	10	7	4	6
11	0	6	5	0	12	10	2	5	15	4	11	13	7	1	12
11	3	6	3	0	12	6	2	5	1	4	10	2	6	15	4
11	6	6	1	0	12	1	2	4	4	4	8	9	6	12	13
11	9	5	15	0	11	13	2	3	8	4	7	0	6	10	8
12	0	5	13	0	11	9	2	2	12	4	5	8	6	8	4
12	3	5	11	0	11	6	2	2	1	4	4	2	6	6	2
12	6	5	9	0	11	2	2	1	6	4	2	12	6	4	2
12	9	5	7	0	10	14	2	0	11	4	1	7	6	2	2
13	0	5	6	0	10	11	2	0	1	4	0	3	6	0	4
13	3	5	4	0	10	8	1	15	8	3	14	15	5	14	7
13	6	5	2	0	10	5	1	14	14	3	13	13	5	12	11
13	9	5	1	0	10	2	1	14	5	3	12	11	5	11	0
14	0	4	15	0	9	15	1	13	13	3	11	9	5	9	6
14	3	4	14	0	9	12	1	13	4	3	10	9	5	7	13
14	6	4	13	0	9	9	1	12	12	3	9	8	5	6	5

TABLE II.

13 G.3. c.62.

Or the PRICE Table of STANDARD WHEATEN Bread.

The first column contains the price of the bushel of wheat, allowance to the baker included: the other columns contain the *prices* of the several loaves.

Price of the bushel of wheat and baking.		Quartern loaf.		Half-peck loaf.		Peck loaf.		Price of the bushel of wheat and baking.		Quartern loaf.		Half-peck loaf.		Peck loaf.	
s.	*d.*	*s.*	*d.*	*s.*	*d.*	*s.*	*d.*	*s.*	*d.*	*s.*	*d.*	*s.*	*d.*	*s.*	*d.*
2	9	0	2¾	0	5½	0	11	8	9	0	8¾	1	5½	2	11
3	0	0	3	0	6	1	0	9	0	0	9	1	6	3	0
3	3	0	3¼	0	6½	1	1	9	3	0	9¼	1	6½	3	1
3	6	0	3½	0	7	1	2	9	6	0	9½	1	7	3	2
3	9	0	3¾	0	7½	1	3	9	9	0	9¾	1	7½	3	3
4	0	0	4	0	8	1	4	10	0	0	10	1	8	3	4
4	3	0	4¼	0	8½	1	5	10	3	0	10¼	1	8½	3	5
4	6	0	4½	0	9	1	6	10	6	0	10½	1	9	3	6
4	9	0	4¾	0	9½	1	7	10	9	0	10¾	1	9½	3	7
5	0	0	5	0	10	1	8	11	0	0	11	1	10	3	8
5	3	0	5¼	0	10½	1	9	11	3	0	11¼	1	10½	3	9
5	6	0	5½	0	11	1	10	11	6	0	11½	1	11	3	10
5	9	0	5¾	0	11½	1	11	11	9	0	11¾	1	11½	3	11
6	0	0	6	1	0	2	0	12	0	1	0	2	0	4	0
6	3	0	6¼	1	0½	2	1	12	3	1	0¼	2	0½	4	1
6	6	0	6½	1	1	2	2	12	6	1	0½	2	1	4	2
6	9	0	6¾	1	1½	2	3	12	9	1	0¾	2	1½	4	3
7	0	0	7	1	2	2	4	13	0	1	1	2	2	4	4
7	3	0	7¼	1	2½	2	5	13	3	1	1¼	2	2½	4	5
7	6	0	7½	1	3	2	6	13	6	1	1½	2	3	4	6
7	9	0	7¾	1	3½	2	7	13	9	1	1¾	2	3½	4	7
8	0	0	8	1	4	2	8	14	0	1	2	2	4	4	8
8	3	0	8¼	1	4½	2	9	14	3	1	2¼	2	4½	4	9
8	6	0	8½	1	5	2	10	14	6	1	2½	2	5	4	10

§ 5. And the bakers and sellers of the said standard wheaten bread shall be liable to all the penalties of the former acts.

13 G.3. c.62.

Miller selling adulterated flour.

§ 6. Provided, that if any information be laid against a baker for making, marking, baking, or exposing to sale any bread purporting to be the standard wheaten bread aforesaid, made of flour, not being the whole produce of the wheat, the bran or hull thereof only excepted, and weighing three-fourth parts of the weight of the wheat whereof it was made, and shall prove that he bought the said flour, as and for such flour, of the miller or mealman, naming his name and place of abode; in such case the baker shall be acquitted, and the miller or mealman shall forfeit as in the case of adulterating corn, meal, or flour, by the said act, *viz.* 31 *G.*2. *c.*29.

§ 7. And when the magistrates have set the assize of the said standard wheaten bread; they may, if they think proper, omit setting the assize of any other sort of bread.

Justices in sessions may prohibit for three months selling, &c. other than standard wheaten bread.

§ 8. And the justices at any general or quarter sessions may prohibit for three months (unless they shall see cause sooner to revoke the prohibition, which they may do at any adjourned quarter sessions or any special sessions,) the makers of bread for sale, from making or exposing to sale any other one or more sorts of bread, purporting to be of a superior quality, and sold at a higher price, than the standard wheaten bread aforesaid: Provided, that no such order of prohibition shall take place, until one calendar month at least after the date of the making thereof: And such order shall be entered by the said justices in a book, to be inspected by the bakers at all seasonable times in the daytime without fee: And the justices shall cause a copy of such order to be put up in some market or other public town within the district, or shall cause the same to be inserted in some public newspaper published within such county, &c.

Baker may object.

And § 9. Provided, that the bakers may have an opportunity, whilst the said prohibition is under consideration, of offering to the justices their objections against it.

Wheaten loaves of 1*d* or 2*d*. may be sold.

§ 10. Provided also, that nothing herein shall extend to prevent the magistrates or others who have power to set the assize of bread, from allowing (even during the time of such prohibition as aforesaid), if they think fit, any white loaves or wheaten loaves of the price of one penny or two-pence to be made and sold, so that they be made, marked, and sold according to the regulations of the assize table of 31 *G.*2.

No assize to be set on coarser bread if sold at a lower price.

§ 11. And whereas in many places the inferior classes of people are used to be supplied with bread made of wheat of a coarse and cheaper sort than the standard wheaten bread aforesaid; therefore it shall be lawful for the baker to make and sell such inferior and coarser bread, provided he sells the same at a price under that of household bread, as directed by the said act of 31 *G.*2. (although nothing in this act extends to setting any assize thereon).

Penalties.

§ 12. But if he sells such inferior and coarser bread by weights and prices whereat the household bread aforesaid is at this time assized, he shall be liable to the same penalties as bakers for any misdemeanor in making and selling any other sort of bread

Powers of former acts.

§ 13, 14. Extend the powers of the former acts, and the privileges of the magistrates under them, to the present act.

13 G. 3. c. 62. Saving rights, &c.

§ 14, 15, 16, 17. Provided always, that nothing herein shall extend to prejudice any right or custom of the city of *London*, or the dean of the collegiate church of *Westminster*, or the high steward of the city of *Westminster*, or either of the two universities.

A.

A. Information of an undue Mixture used in making of Bread; on stat. 31 *G.* 2. *c.* 29. § 21.

County of ——— } *BE it remembered, that this ——— day of ——— in the ——— year of the reign of ——— at ——— in the said county,* A. I. *yeoman, in his proper person, exhibiteth to me,* J. P. *esquire, one of his majesty's justices of the peace for the said county, a complaint and information, and thereby informeth me, that* A. O. *late of ——— in the county aforesaid, baker, on the ——— day of ———* [Here specify the time of the offence, that the prosecution may appear to be commenced within three days after the offence committed, according to § 42. of the said statute] *did put into and use, in the making of bread to be sold, a preparation or mixture in which* [*alum*] *was an ingredient, contrary to the form of the statute in such case made and provided; whereby the said* A. O. *hath forfeited a sum of money not exceeding* 10*l. nor less than* 40*s.; and thereupon the said* A. I. *prayeth the judgment of me the said justice in that behalf, and that he the said* A. I. *may have one moiety of the said forfeiture, according to the form of the statute in such case made; and that the said* A. O. *may be summoned to answer the premises before me the said justice.*

B.

B. Summons thereupon.

County of ——— } To the constable of ———.

WHEREAS complaint and information hath been exhibited before me J. P. *esquire, one of his majesty's justices of the peace for the said county, by* A. I. *yeoman, that* A. O. *late of ——— in the county aforesaid, baker, on the ——— day of ——— in the ——— year of the reign of ——— did put into and use, in the making of bread to be sold, a preparation or mixture in which* [*alum*] *was an ingredient, contrary to the form of the statute in such case made and provided: These are therefore to require you forthwith to summon the said* A. O. *to appear before me at ——— on the ——— day of ——— at the hour of ——— in the forenoon of the same day, then and there to answer to the said information: And be you then there, to certify what you shall have done in the premises. Herein fail you not. Given under my hand and seal the ——— day of ——— in the year aforesaid.*

Warrant.

If the party shall not appear on such summons, or offer some reasonable excuse for his default; then on oath made of the offence by one witness, such justice shall issue his *warrant* (mutatis mutandis) *to apprehend the offender and bring him before the said justice*, to answer the said information.

On the party's appearance; or if he do not appear, then on proof on oath of the summons being given to him or left at his

usual place of abode; or if he cannot be apprehended by warrant as aforesaid; the justice may proceed to hear and determine the offence.

C. The Form of the Conviction, by the Words of the Statute, shall be as follows: C.

County of ——— } *BE it remembered, that on this ——— day of ——— in the ——— year of the reign of ———* A. O. *is convicted before me* J. P. *esquire, one of his majesty's justices of the peace for the said county, for putting into and using, in the making of bread to be sold, a preparation or mixture in which [alum] was an ingredient: And I do adjudge him to pay and forfeit for the same the sum of 5l. Given under my hand and seal the day and year aforesaid.*

D. Warrant of Distress, on Non-Payment of the Penalty within 24 Hours after his Conviction. D.

County of ——— } To ——— the constable of ———.

FORASMUCH as A. O. *late of ——— in the county aforesaid, baker, was on the ——— day of ——— duly convicted before me* J. P. *esquire, one of his majesty's justices of the peace for the said county, by the oath of* A. W., *a credible witness, for that the said* A. O. *on the ——— day of ——— did put into and use, in the making of bread to be sold, a preparation or mixture in which [alum] was an ingredient, against the form of the statute in such case made and provided; by reason whereof, I did adjudge and have adjudged him to pay and forfeit for the said offence the sum of 5l. to be distributed as is hereinafter mentioned: And whereas it appears to me, that the said sum, or any part thereof, is not yet paid: I do therefore hereby authorise and require you forthwith to make distress of the goods and chattels of him the said* A. O., *and if within the space of five days next after such distress by you taken, the said sum of 5l. shall not be paid, that then you do cause the said goods by you seized to be appraised and sold; rendering the overplus to him the said* A. O. *after deducting the said sum of 5l. and also the costs and charges of the prosecution for the said offence, and of the said distress and sale; which costs and charges I do hereby ascertain at the sum of 30s.: And out of the said sum of 5l. so forfeited as aforesaid, you are to pay one moiety to* A. I. *yeoman, who informed me of the said offence, and prosecuted to conviction him the said* A. O. *before me for the same, and the other moiety you are to apply for the better carrying the act of parliament for the due making of bread, and for the other purposes therein mentioned, into execution, according as I shall hereafter give you directions: And if sufficient distress cannot be had or found whereupon to levy the said sum of 5l. as aforesaid, you are hereby required to certify the same to me, together with the return of this precept. Herein fail you not. Given under my hand and seal the ——— day of ——— in the ——— year of the reign of ———.*

Return of the Want of Distress, indorsed upon the Warrant.

County of ——— to wit. } *I A. C. constable of ——— in the said county, do hereby certify* J. P. *esquire, one of his majesty's justices of the peace for the said county, that by virtue of this warrant I have made diligent search for the goods and chattels of the within mentioned* A. O., *and that I can find no sufficient goods and chattels of him the said* A. O. *whereon to levy the within mentioned sum of 5l. Witness my hand the ——— day of ——— in the year of our Lord* 18—.

A. C.

Sworn before me the said justice,
the day and year aforesaid,

J. P.

E.

E. Commitment for Want of Distress.

County of ——— to wit. } To the constable of ——— in the said county, and to the keeper of the common gaol at ——— in the said county.

FORASMUCH as A. O. *late of ——— in the county aforesaid, baker, was on the ——— day of ——— duly convicted before me* J. P. *esquire, one of his majesty's justices of the peace for the said county, by the oath of* A. W. *a credible witness, for that he the said* A. O. *on the ——— day of ——— did put into and use, in the making of bread to be sold, a preparation or mixture in which [alum] was an ingredient, against the form of the statute in that case made and provided; by reason whereof I did adjudge him to pay and forfeit for the said offence the sum of 5l.: And whereas on the ——— day of ——— in the year aforesaid, I did issue my warrant to the constable of ——— to levy the said sum of 5l. by distress of the goods and chattels of him the said* A. O.: *And whereas it appears to me, as well upon the oath of the said constable of ——— as otherwise, that he the said constable of ——— hath used his best endeavours to levy the said sum on the goods and chattels of the said* A. O. *as aforesaid, but that no sufficient distress can be found whereon to levy the same: Therefore I do hereby command you the said constable of ——— him the said* A. O. *to apprehend and safely convey to the said common gaol, and him to deliver to the keeper thereof aforesaid, together with this precept: And I do hereby command you the said keeper of the gaol aforesaid to receive into your custody in the said gaol him the said* A. O. *and him there safely to keep for the space of one calendar month from the time of this commitment; unless the said sum of 5l. and the costs and charges of the prosecution, which I have ascertained at the sum of ———, shall be sooner paid. Given under my hand and seal the ——— day of ——— in the year aforesaid.*

F. G. The like Process as above may be for Bread deficient in Weight; beginning the Information A., which is the Ground-work of the whole, thus: F. G.

THAT A. O., *late of* ——— *in the county aforesaid, baker, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *did expose to sale one loaf of household bread importing to be a two-penny loaf, deficient in weight one ounce, according to the assize then and there set for the said bread.*

And so in other like cases.

H. Form of Conviction of a Baker, for selling Bread under the Assize. H.

From *Paley on Convictions* [32.] [33.].

County of ——— to wit. } *BE it remembered, that on* ——— *in the* ——— *year of the reign of our sovereign lord* George *the third, of the United Kingdom, &c. and A.D.* ——— W. L. *was convicted before me* ——— *esquire, one of his majesty's justices of the peace for the said county of* ——— *for that he the said* W. L. *at the time of the committing of each of the offences hereinafter mentioned, being a person making bread for sale within the parish of* ——— *in the said county, on the* ——— *day of* ——— *unlawfully did make for sale, within the limits to which the assize hereinafter mentioned, at the time of the making thereof, and at the time of committing of each of the offences hereinafter mentioned, did extend, sixty-two loaves of wheaten bread as and for quartern loaves, which were all the loaves then and there found in the shop of the said* W. L. *which had been baked within twenty-four hours next preceding the time of weighing the same, deficient in weight according to the assize before then duly and legally set and then in force, for loaves of wheaten bread, being quartern loaves, to be sold at, in, and throughout the limits aforesaid, in pursuance of the statute in such case made and provided, by which said assize a quartern loaf of wheaten bread was to weigh four pounds five ounces and eight drams avoirdupois, that is to say, the said loaves being then and there deficient in weight according to the said assize upon the average of all the said loaves which were then and there found, and which had been baked within twenty-four hours* ——— *ounces avoirdupois, and every of them, having been brought before me within twenty-four hours after the baking thereof, and it not appearing to my satisfaction that any of the deficiency in the weight of any of the said loaves arose from unavoidable accident, or was occasioned by or through any contrivance or confederacy: And I do adjudge him the said* W. L. *to forfeit and pay for the said offences the sum of* 33*l.* *and* 5*s. being the sum of* 5*s. for every ounce of bread which was wanting and deficient in the weight each and every of the said loaves ought to have been of, according to the said assize. Given under my hand and seal, at* ——— *in the said county of* ——— *this* ——— *day of* ——— *A.D.* 18—.

Breaking Gaol. See **Prison Breaking.**

Breaking open Doors. See **Arrest.**

Brewers. See **Excise.**

Bribery.

BRIBERY in a strict sense is taken for a great misprision of one in a judicial place taking any thing whatsoever, except meat and drink in small value, of any one who has to do before him any way, for doing his office, or by colour of his office, but of the king only; and is punishable at the common law by fine or imprisonment. 1 *Haw. c.* 67. § 1.

See Parliament.

Bricks and Tiles.

[17 Ed. 4. c. 4.—17 G. 3. c. 42.—55 G. 3. c. 176.]

For the Duty on Bricks and Tiles, and other Excise Regulations, see Vol. II. *tit.* Excise.

17 Ed. 4. c. 4. True making of tiles.

BY the 17 *Ed.* 4. *c.* 4. Every person using the occupation of making of the tile called Plain tile, (otherwise called Thak tile,) roof tile or cres tile, corner tile, and gutter tile, shall make it good, seasonable, and sufficient, and well whited and annealed.

And the earth, whereof any such tiles shall be made, shall be digged and cast up before *Nov.* 1. next before they shall be made, and stirred and turned before *Feb.* 1. next following; and not wrought before *March* 1. next after; and the same earth before it be put to making of tile shall be truly wrought and tried from stones.

And the veins called malin or marle, and chalk, lying commonly in the ground near to the land convenient to make tile, after the digging of the said earth whereof any such tile shall be made, shall be well severed from the earth of which the tile shall be made.

And every such plain tile so to be made, shall be 10½ inches long, 6¼ inches broad, and half an inch and half a quarter thick: roof tile or cres tile, 13 inches long, half an inch and half a quarter thick, with convenient deepness; gutter tile and cover tile 10½ inches long, with convenient thickness, breadth, and deepness.

And if any person shall set to sale any such tile otherwise made, he shall forfeit to the buyer double value of the tile, and make fine and ransom at the king's will; to be recovered by action of debt, with costs. And also the justices of the peace and every of them may hear and determine offences against this act; who shall assess upon the offender no less fine than for every 1000 plain tile 5*s.*, for every 100 roof tile 6*s.* 8*d.*, and for every 100 corner or gutter tile 2*s.*

And the said justices shall have power to call before them or any of them, persons having experience or knowledge in making tile, to search and examine the digging, casting, turning, parting, making, whiting, and annealing aforesaid; and no person shall put

any such tile to sale before it be searched, on pain of forfeiture. And if the searcher shall find any persons offending against this act, they shall present the defaulters at the next sessions, which shall be equal to a presentment of twelve men. And the searcher shall have of the tile maker for his labour for every 1000 plain tile searched 1*d.*, for every 100 roof tile a halfpenny, and for every 100 corner and gutter tile a farthing. Searcher neglecting his duty shall forfeit 10*s.*; and the justices may hear and determine the faults of the searchers, in like manner as of the tile makers.

Tiles for draining land are exempt, by several statutes, from all duties. 34 *G.* 3. *c.* 15. 42 *G.* 3. *c.* 93. and 46 *G.* 3. *c.* 138. And by stat. 55 *G.* 3. *c.* 176, the exemption is extended to tiles which are necessary for the "foundations and support" of such drains, according to the following description: "Flat tiles not exceeding one inch in thickness, each thereof having at one end a semicircular projection, and at the other a semicircular arch or indent, such projection and arch being portions of circles of equal diameters, and each such tile being also not less than nine inches in length, and not exceeding seven inches in breadth, such flat tiles being also perforated with circular holes, each thereof being not less than two inches in diameter, and the sum of the areas of such holes in each such flat tile amounting to not less than a quarter part of the surface or superficial content of such flat tile, and no such flat tile being fit or proper for the purpose of being used in building, or in the roof or covering of any house, shed, or other building whatever."

55 G. 3. c. 176.

By the 17 *G.* 3. *c.* 42. § 1, 2. All bricks made for sale shall, when burnt, be not less than eight inches and a half long, two inches and a half thick, and four inches wide; and all pantiles not less than thirteen inches and a half long, nine inches and a half wide, and half an inch thick; on pain that the maker shall forfeit 20*s.* for every 1000 bricks, and 10*s.* for every 1000 pantiles, and so proportionably for a greater or less number. [*Note.* — The reason why no provision was made concerning *pantiles*, among the other sorts of tiles, by the above-mentioned act of the 17 *Ed.* 4. is because *pantiles* are a modern invention; long after the date of that act.]

17 G. 3. c. 42. True making of bricks and pantiles.

§ 3. And the size of the sieves or screens for sifting or screening sea-coal ashes, to be mixed with brick earth in making of bricks, shall not exceed one quarter of an inch between the mashes.

§ 4. All contracts for enhancing or fixing the price of bricks or tiles shall be void; and every brick-maker or tile-maker, or other person interested in the making for sale, offending therein shall forfeit 20*l.*; and every clerk, agent, or servant, 10*l.*, half to the poor, and half to him who shall sue in six calendar months in one of the courts at *Westminster*.

Combinations to enhance the price.

§ 5. All other penalties and forfeitures, not herein otherwise directed, shall be recovered before one justice, on proof by confession or oath of one witness (the oath to be administered *gratis*); to be levied by distress and distributed half to the informer, and half to the poor of the parish where the offender dwells; and if sufficient distress shall not be found, or such penalties and forfeitures shall not be forthwith paid, the justice shall commit the offender to the common gaol or house of correction for the place where the matter shall arise, for any time not exceeding two

Penalties.

17 G. 3. c. 42.

calendar months, unless such penalties and forfeitures and all reasonable charges shall be sooner paid.

§ 6. The conviction to be in this form, or to the like effect:

BE it remembered, that on the ——— day of ——— in the year of our Lord ——— A. B. *is convicted before me* C. D. *one of his majesty's justices of the peace for the ——— of ———* [specifying the offence, and the time and place when and where the same was committed, as the case shall be]. *Given under my hand and seal the day and year aforesaid.*

§ 7. But no penalty in respect of the dimensions of bricks or tiles shall be recovered, unless the information shall be laid within one calendar month after sale or delivery of the brick or tiles.

Appeal.

§ 8. Persons aggrieved may, within four calendar months after the cause of complaint shall have arisen, appeal to the general quarter sessions for the county, riding, division, or place, giving twenty-one days' notice at the least, in writing, of his intention to bring such appeal, and of the matter thereof, to the person or persons whose acts are complained against; and within eight days after such notice entering into recognizance before a justice with two sureties, conditioned to try such appeal at, and abide the order of, and pay such costs as shall be awarded at such sessions. And the justices at such sessions, on proof of such notice and recognizance, shall hear and determine the appeal in a summary way, and award such costs to the party appealing or appealed against as they shall think reasonable; and their determination shall be conclusive; and no order or other proceedings in the premises shall be quashed for want of form, or removed by *certiorari* or other process into any of H. M.'s courts of record at *Westminster.*

It has been decided that a person who had sold a quantity of bricks of less than the statutable dimensions, could not recover the value of such brick so sold. *Law* v. *Hodson*, 11 *East*, 300.

Bridges.

NOTE.—This title treateth only of County Bridges: those which are under the cognizance of the surveyor of the highways, as being repaired by the several parishes or districts, are treated of in Vol. II. tit. Highways in general, § IV. (3.)

§ I. *Who shall repair: And herein, of destroying.*
[9 H. 3. c. 15.—22 H. 8. c. 5.—43 G. 3. c. 59.—1 G. 4. c. 116.]

II. *Power of the Leet to enquire thereof.*

III. *Power of the Justices in Sessions.*
[22 H. 8. c. 5.]

IV. *Concerning the 300 Feet at the Ends of Bridges.*
[22 H. 8. c. 5.—14 G. 2. c. 33.]

V. *Indictment of Bridges;* and herein,
Of the Pleading to the same, and other Matters relating to the Trial thereof.
[1 Ann. st. 1. c. 18.—12 G. 2. c. 29.]

VI. *Charges and Manner of repairing.*
[22 H. 8. c. 5.—12 G. 2. c. 29.—14 G. 2. c. 33.—43 G. 3. c. 59.—52 G. 3. c. 110.—54 G. 3. c. 90.—55 G. 3. c. 143.]

VII. *Contracting for a Term of Years.*
[12 G. 2. c. 29.—52 G. 3. c. 110.]

I. Who shall repair.

By the Great Charter, 9 *H.* 3. *c.* 15. *No town nor freeman shall be distrained to make bridges nor banks, but such as of old time and of right have been accustomed.*

And none can be compelled to make new bridges, where never any were before, but by act of parliament. 2 *Inst.* 701.

By the common law, counties are chargeable with the repair of public bridges.

By the common law, also, some persons (spiritual or temporal, corporate or not corporate,) are bound to repair bridges by reason of the *tenure* of their lands or tenements; and some by reason of *prescription* only.

Individuals may be bound by tenure.

By *tenure*, in the case of private individuals; by reason that they and those whose estate they have in the lands or tenements, are bound in respect thereof to repair the same. 2 *Inst.* 700.

Corporate bodies, by prescription and usage.

By reason of *prescription* only as against corporate bodies. But herein there is a diversity between bodies politic or corporate, spiritual or temporal, and natural persons: for the bodies politic or corporate, spiritual or temporal, may be bound by usage and prescription only, because they are local and have a succession perpetual; but a natural person cannot be bound by act of his ancestor, without a lien, or binding, and assets. 2 *Inst.* 700.

And in *R.* v. *Inhab. of Ecclesfield, H.* 58 *G.* 3. 1 *B.* & *A.* 359. Ld. *Ellenborough* C. J. said, "As the case of parishes, and highways within them, is analogous to that of counties and bridges, the charge of repairing a highway shall fall upon the parish, in default of usage and custom to charge the particular portion of the parish wherein it is situate; and as a hundred, or parish, or other known portion of a county, may by usage and custom be chargeable to the repair of a bridge erected within it, so in like manner a township or other known portion of a parish may by usage and custom be chargeable to the repair of the highways within it. And upon an attentive perusal of the passages of Ld. *Coke*'s commentary, we think it plain, that in drawing the distinction between bodies politic and natural persons, the learned writer speaks of individual persons, and not of an aggregate of the inhabitants of parishes or other places."

In a plea by the inhabitants of a county, that the inhabitants of a particular township

R. v. *The Inhab. of the West Riding of Yorkshire, T.* 2 *G.* 4. 4 *B.* & *A.* 623. Indictment in the usual form against the defendants, for the non-repair of 300 feet of the highway next adjoining the south end of *Leeds* bridge, in the West Riding of the county of *York*. The plea admitted, that, as to 75 feet next adjoining

have immemorially repaired the highway at the end of a county bridge situate within the township, it is not necessary to state any consideration for such prescription.

the south end of the said bridge, the inhabitants of the West Riding were liable to repair the same; but stated, as to the residue of the said highway, that the bridge was an ancient bridge, situate from time immemorial within the township of *Leeds*, in the said Riding, and that the said residue of the said highway, from time immemorial, had also been situate in the said township, and from time immemorial had been repaired by the inhabitants of the township of *Leeds*. Demurrer and joinder. After argument, *Abbott* C. J. said, the uniform course of pleading is to state the prescription as in the present case. The case of *R.* v. *St. Giles's, Cambridge* (*a*), is quite distinguishable, on the grounds stated in the judgment of the court in *R.* v. *Ecclesfield*, 1 *B. & A.* 359. (*a*) Here the highway is situate within the township of *Leeds*. The object of the form of the plea in *R.* v. *Ecclesfield*, probably was to allow greater latitude to the evidence in support of it, and also because possibly the road indicted in that case was not an immemorial highway. Here it is the ordinary case of a township, liable to repair a part of a bridge situate within it, of which there are many instances in the books. There must, therefore, be judgment for the defendants. See *R.* v. *Inhab. of the West Riding*, 7 *East*, 588.

An indictment stated that an ancient bridge, situate within the parishes of *Machynlleth* and *Pennegoes*, was out of repair, and that the inhabitants of the said parish of Pennegoes and town of Machynlleth aforesaid, from time immemorial, by reason of the tenure of certain lands in the said parish of Pennegoes and town of Machynlleth, have repaired the bridges: Held, upon error, that the indictment was bad, because it did not appear that the bridge was situate within the town, and therefore that the inhabitants of the town were not liable,

R. v. *The Inhab. of Machynlleth and Pennegoes*, *T.* 4 *G.* 4. 2 *B. & C.* 166. Writ of error upon a judgment of the court of quarter sessions, for the county of *Montgomery*, upon an indictment for not repairing a bridge; which charged, that a certain ancient bridge over the river *Diflas*, commonly called *Pontfelingerrig* bridge, and situate within the parishes of *Machynlleth* and *Pennegoes*, in the said county of *Montgomery*, on the king's highway there, the same being from the time whereof the memory of man is not to the contrary, a common king's highway used for all the king's subjects, with their horses, coaches, carts, and carriages, to go, return, and pass at their will and pleasure, on, &c., and for the space of two years thence next following, was very ruinous, &c. for want of due reparation thereof, so that the subjects of the king, with their horses, &c. could not pass as they ought, and were wont to do. The indictment then stated, that the inhabitants of the said parish of *Pennegoes*, and the inhabitants of the said *town* of *Machynlleth aforesaid*, in the said county of *Montgomery*, from the time whereof, &c. and by reason of the tenure of their lands and tenements in the said parish of *Pennegoes* and *town* of *Machynlleth*, have repaired, &c. the said bridge, &c. It was then alleged upon the record, that *A. B.* of the said parish of *Pennegoes*, and *C. D.* of the said town of *Machynlleth*, two of the inhabitants of the said parish of *Pennegoes* and the town of *Machynlleth*, came into court, and pleaded not guilty. The trial of the indictment was then stated, and that defendants were found guilty; and that it was adjudged that the said inhabitants in the indictment specified should pay a fine of 400*l*. The following errors were assigned: first, that the inhabitants of the parish of *Pennegoes*, and the inhabitants of the town of *Machynlleth*, were stated to be jointly liable to the repair of the bridge; and, secondly, that it was not stated in the indictment that any part of the bridge was within the town, or that the

(*a*) Vol. II. tit. Highways in general, § IV. (3.) p. 825.

inhabitants of the parish of *Pennegoes*, and the inhabitants of the town of *Machynlleth*, were a body corporate. The case was now argued by Sir *W. Owen* in support of the errors assigned, and *Campbell* in support of the indictment. — *Bayley* J. The objection to this indictment is fatal. The bridge is described as situate within the parishes of *Machynlleth* and *Pennegoes*. But the parishes are not alleged to be within the town. And unless the bridge be situate within the town, the inhabitants of the town would not be liable unless a special consideration be shewn. And here they cannot in their character of inhabitants be liable by reason of the tenure of lands. For they cannot as such hold lands. — *Holroyd* J. It is quite clear that the judgment cannot be supported. The word *town* cannot be rejected, and if it could, it would not then appear upon the record that any person came to defend for the parish of *Machynlleth*. — *Best* J. The case of the *King* v. *The Inh. of St. Giles, Cambridge*, 5 *M. & S.* 260., is an authority to shew that the inhabitants of a township cannot be liable for the repair of a road situate out of the township, unless a consideration for such repair be shewn. Here that is attempted to be shewn, by alleging that the inhabitants of the parish and the town were liable by reason of the tenure of certain lands, but as inhabitants they could not hold lands, and it is not shewn that they are incorporated. The consideration, therefore, fails, and it not being shewn that the bridge was within the town, the common law liability does not attach, and therefore the judgment cannot be supported. Judgment reversed.

Rex v. Machynlleth and Pennegoes.

unless a special consideration were shewn; and that here no sufficient consideration was shewn, inasmuch as the inhabitants could not hold land, and therefore could not be liable by reason of law.

If a man make a bridge for the common good of all the subjects, he is not bound to repair it; for no particular man is bound to reparation of bridges by the common law, but by tenure or prescription. 2 *Inst.* 701.

Bridge built by a private person which is afterwards used by the public.

And if none are bounden by tenure or prescription at common law, then the whole county or franchise shall repair it. *Id.*

When the county shall repair.

The authorities on this subject were all considered in *R.* v. *West Riding of Yorkshire*, 5 *Burr.* 2594. 2 *Bla. R.* 685. in the case of *Glusburne* bridge, where to an indictment against the Riding for the non-repair, the plea stated, that there was an ancient foot-bridge over the stream, which the township of *Glusburne*, who were bound to repair it, took down, and in lieu thereof erected the carriage-bridge in question; and had repaired the new bridge since its erection; that the new bridge was of public utility, and used constantly, till carried away by a flood; that the ancient foot-bridge stood sixty yards below the new bridge in the same highway: And all the court held the Riding liable to the repair, on the general principle, that if a private person build a bridge which afterwards becomes a public convenience, the county is bound to repair it.

The county is bound to repair a new bridge, built by a private person, if it be of public utility.

The public benefit is the grand criterion. If a man wantonly erects an useless, or a mere ornamental bridge, neither he nor the public are bound to sustain it. And if it is principally for his own benefit, and only collaterally of benefit to others, the public have nothing to do with it. But where it is of public utility, the public, which reaps the benefit, ought to sustain the burden of repairing it. Else it would be a great discouragement to public-spirited persons, to erect a beneficial bridge, provided they must either repair it themselves, or it must run to ruin. *S. C.*

Bridge built by turnpike trustees under act of parliament.

R. v. *West Riding of Yorkshire*, 2 *East*, 342. (The case of *Pace Gate Bridge.*) The defendants were indicted for non-repair of a public bridge, and the indictment stated the bridge to be situate upon a rivulet in a public highway. The defendants pleaded that after the making of a certain turnpike act, the said bridge was first made by the order of certain trustees in that act named, in pursuance of the directions, and for the purposes in that same act contained and named, upon the said road in the said act mentioned; and that no bridge had ever been there before that time erected.—To this plea the plaintiffs demurred. The question was argued at much length before the court of *K. B.* and the judgment of that court was also very full and able. *Per* Lord *Ellenborough* C. J. "By the common law, counties are chargeable with the repair of public bridges; unless it be shewn as the statute 22 *H.* 8. *c.* 5. (which was founded on the common law, and of which hereafter,) says, 'what persons, lands, tenements, and bodies politic, ought to make and repair such bridges.' In the absence of such proof, that burden is, by the operation of the common law, thrown on the inhabitants of the county in which the bridge lies. But in order to effect this, it is not enough that a new bridge shall be built in a highway used by the public; it must also be useful to the public. I do not lay stress on the idea of the public having adopted the bridge by passengers going over it, because if it occupy the highway, they cannot help using it: I only rely on the using of it, so far as to shew that it does not appear to have been treated as a nuisance, but to have been acquiesced in by the public. If, however, it be built in a slight or incommodious manner, no person can at his choice impose such a burden on the county, and it may be treated altogether as a nuisance, and indicted as such. But if the public lie by without objection, and make use of it for some time, it is evidence that they adopt the act, and the bridge becoming of public benefit, the burden of repair ought properly to fall upon the public. Now that this bridge is for the common good is proved by the use of it, by all the king's subjects passing that way, by its not having been treated as a nuisance, but acquiesced in. Then, after having enjoyed the benefit of it, shall the public object to it, when they begin to feel the burden of repair?"—The rule laid down by *Aston* J. in the *Glusburne* bridge case seems to be the true one, that "if a man build a bridge and it becomes *useful* to the county in general, the county shall repair it." And as to the *adoption* of it by the public, there is good sense in not relying on that, except *as evidence* of its being a public bridge, and of utility to the public.—*Per Grose* J. It being stated in the plea that the bridge was erected by the trustees of a turnpike road, under a public act of parliament, I cannot suppose that it was not a public bridge built for the benefit of the public, and of public utility; and not merely for ornament, or for private benefit. If it were shewn that a bridge had been built at first, in a slight and imperfect manner, for the purpose of throwing the expence immediately on the county, I should think that it was a public nuisance, and indictable. *Lawrence* J. agreed, and said, The principle to be collected from the *Glusburne* bridge case is, that if the bridge be of public utility, the county who derive advantage from it must support it; and said, that as the bridge was erected by trustees of a turnpike

road, under an act of parliament, they could not suppose it was erected for other purposes than the public utility.

R. v. W. Riding of Yorkshire.

In the same case of *Pace Gate Bridge*, upon the particular question of the liability of the trustees of the road, Lord *Ellenborough* C. J. said, As to the objection, that it ought to be repaired by the commissioners of the turnpike by whom it was erected, and who have authority to raise tolls for the purposes of the act, I cannot find any authority for them to erect bridges under this act; however, I will suppose they were authorised to erect the bridge; yet no fund having been specially provided by the legislature for the repair of it, the burden must necessarily fall where the common law has placed it, *viz.* on the Riding. I am aware of the extent of this opinion, and if the trustees under similar acts, throw this burden generally on the counties, it may be necessary to make special legislative provision in future. — *Per Lawrence* J. As to the objection that the trustees are empowered to take tolls; that is, supposing that they are to derive some private advantage from the tolls, which is not the case; whatever tolls are raised must be laid out on the maintenance of the roads. It might as well be contended, that if a parish were to build a new bridge on a road within their limits, they would be bound to keep it in repair afterwards, and that the county would not be liable, as that the trustees are in this case, because the bridge is built in the turnpike road; in truth, the trustees are merely substituted in lieu of the parish; — and *Le Blanc* J. observed, that the circumstance of the bridge being built by trustees under an act of parliament, to which the defendants must be considered as parties and assenting, and by those to whom the legislature delegated the trust of determining whether it were proper to build the bridge, made the case stronger against the defendants than where an individual had in the first instance exercised his own discretion.

Non-liability of turnpike trustees to repair bridge built by them under act of parliament.

Rex v. *Inhab. of the County of Kent*, 13 *East*, 220. The company of proprietors of the navigation of the river *Medway*, under the authority of an act of parliament (16 & 17 *C.* 2.), deepened a particular spot in the bed of the river *Medway*, which spot had before that time been fordable by foot passengers, but afterwards in consequence of such deepening became impassable for foot, and almost for horses. Upon threat of an indictment for the destruction of the highway across the ford, the company, in 1767, built a bridge and repaired it, till its destruction by a flood. The same act which empowered them to *cleanse, scour, dig, widen, and make navigable* the said river, also empowered them *to amend or alter such bridges or highways as might hinder the said passages or navigation,* (leaving them or others as convenient in their room.) And *per* Lord *Ellenborough* C. J. The power given to the company to take or alter the old highway was upon condition of leaving another passage as convenient in its room: and if they do not perform the condition, they are not entitled to do the act; it is a continuing condition, and when the company thought proper for their own benefit to alter the highway in the bed of the river, so that the public could no longer have the same benefit of the ford, they were bound to give another passage over the bridge, and to keep it for the public. The other judges agreed.

Repair of bridge erected where a ford existed till deepened for purposes of navigation.

Rex v. *Inhab. of the County of Kent*, 2 *M.* & *S.* 513. Where a person about 45 years back erected a mill and dam thereto for

R. v. Kent.

his own profit, *per quod* he deepened the water of a ford, through which there was a public highway, but the passage through which was, before the deepening, very inconvenient at times to the public, and the miller afterwards built a bridge over it, which the public had ever since used. The court of K. B. held that the *county* and not the *miller* were chargeable with the reparation.

Horse bridge enlarged to carriage bridge.

Rex v. *West Riding of Yorkshire*, 2 *East*, 353. (n.) Defendants were indicted for not repairing a public *carriage* bridge; Plea, that certain townships had *immemorially* repaired. Issue taken thereon. The facts were, that there had been immemorially a *foot* bridge till 1745, when the townships enlarged it to a *horse* bridge, and afterwards to a *carriage* bridge, at their own expense. That the Riding had never repaired it. It was held, that this evidence did not maintain the defendants' plea; and further, that where a party is bound to repair a foot bridge, he shall not discharge himself by turning it into a horse or carriage bridge, but shall still repair it as a foot bridge, i. e. *pro ratâ*.

Foot, horse, or carriage bridges.

All public bridges are *primâ facie* repairable by the inhabitants of the county without distinction of foot, horse, or carriage bridges, unless they can shew that others are bound to repair particular bridges.

Repairing horse and foot bridges.

The King v. *the Inhab. of the County of Salop*, 13 *East*, 95. This was a presentment by a justice of peace upon his own view that from time immemorial there was and yet is a certain common bridge called *Pilson* bridge, over a brook or river called *Sleepy Meese*, used for all the liege subjects, &c. *with their horses and on foot* to pass, &c. situate in the townships of *Pilson* and *Chetwynd* in the parish of *Chetwynd*, in the county of *Salop*, in the king's common highway there, leading from the market town of *Market Drayton*, in the said county, towards and unto the market town of *Newport*, in the county aforesaid; and that the bridge aforesaid, situated, &c. on the 13th of *September*, 49 *G*.3. and continually afterwards, until the present day, was and yet is ruinous for want of due repair, &c. against the peace, &c. To this two of the inhabitants of the county appeared and pleaded for themselves and the rest of the inhabitants of the county (except the inhabitants of the said townships of *Pilson* and *Chetwynd*): that the inhabitants of the said townships, independent of the other inhabitants of the said county, from time immemorial have been used and accustomed and of right ought to repair the said bridge as often as occasion required, and that the said bridge is and from time immemorial hath been used for the king's subjects *with their horses and on foot only* to pass, &c., and that the same hath not been used for the king's subjects with *their carriages*, &c. to pass, &c.; and that the same bridge hath from time immemorial been situate in the townships of *Pilson* and *Chetwynd*, and that by reason of the premises, the inhabitants of those townships, independently of the rest of the inhabitants of the said county, during all the time in the said presentment mentioned, ought to have repaired and still of right ought to repair the said bridge, and traversed that the inhabitants of the county were bound to repair it. The presentment was tried at the sessions by a jury who found the defendants guilty, *subject to the opinion of the court of K. B. on the following* CASE: —

The bridge comprised in the above presentment is a horse bridge, and not wide enough for a cart or other carriage to pass

over it. The bridge is situate on one side of the public highway, the road for carriages being through the ford in the brook or river on the other side of the said highway. The bridge is situate part in the township of *Chetwynd*, in the parish of *Chetwynd*, in the county of *Salop*, and the other part in the township of *Pilson*, in the said parish of *Chetwynd*, over the water which divides those townships, which townships have immemorially repaired their respective highways. No proof of any repairs having been ever done to the bridge at the expense of the defendants, the inhabitants of the county of *Salop*, or any one else was produced. The bridge is of public utility, and the question, therefore, was, Whether the inhabitants of the said county were liable *primâ facie* to repair this horse and foot bridge, the same as if it were a carriage bridge? When this case was called on in the crown paper, Lord *Ellenborough* C. J. said, There is no doubt that a public *footway* or *bridleway* is a *highway*: (*Vide Allen* v. *Ormond*, 8 *East*, 4.) it is a highway for foot passengers or for horse passengers, &c., and the parish is bound to repair it till they can throw the *onus* upon others. So all public bridges are *primâ facie* repairable by the inhabitants of the county, without distinction of foot, horse, or carriage bridges, unless they can shew that others are bound to repair particular bridges. [*Rex* v. *Inh. of W. Riding of Yorkshire*, 5 *Burr.* 2594. (*ante*, p. 465.) was the case of an ancient foot bridge repaired by the inhabitants of the township of *Glusburne*, which bridge was taken down, and in lieu of it, 60 yards above, in the stream in the same highway, was built a carriage bridge, with the repairs of which the county was fixed. And *vide Rex* v. *the Inhab. of the West Riding of Yorkshire*, 2 *East*, 342. and *Rex* v. *the Inhab. of Bucks*, 12 *East*, 192. upon the construction of the statute of bridges, 22 *H.* 8. *c.* 5. which statute mentions *bridges* generally, without distinguishing between the different kinds of bridges; and Lord *Coke* observes, (2 *Inst.* 701.) that "the indictment upon this statute saith, *quod* pons publicus et communis *situs in altâ regiâ viâ super flumen seu cursum aquæ*, &c.] But it is quite a new thing, that a case should be reserved upon the trial of an indictment by a jury at the sessions. It is a very great irregularity and ought to be noticed, in order to prevent the repetition of it. We shall take no notice of the case reserved. The indictment is well removed by the *certiorari*, but we shall take no notice of the case: we shall leave the matter as it is, and pronounce no judgment upon it.

R. v. Salop.

Foot or bridle way is a highway.

The county is liable to repair a bridge built in the highway, and used by the public above forty years, though originally erected for the convenience of an individual. *Rex* v. *Inhab. of Glamorganshire*, 2 *East*, 356. (n.)

County liable to repair a bridge built in the highway, and used by the public above 40 years, though originally erected for the convenience of an individual.

Rex v. *Inh. of the County of Bucks*, 12 *East*, 192. The inhabitants of the county of *Bucks* were indicted for not repairing *Datchet* bridge. They pleaded specially, and were found guilty, subject to the opinion of the court upon a case, stating that queen *Anne*, for her greater convenience in passing to and from *Windsor* castle, built a bridge over the *Thames*, at *Datchet*, in the common highway leading from *London* to *Windsor*, in lieu of an ancient ferry, where she kept boats for the public accommodation, and received tolls. She and her successors repaired the bridge till 1796, when it having in part fallen in and

R. v. Bucks.

Bridge erected in lieu of ferry.

become impassable, the whole was removed, and the materials converted to the use of the king, who re-established the ferry. The question was, whether this was a public bridge and the defendants liable to repair and rebuild? — After an elaborate argument and full consideration, Lord *Ellenborough* C. J. delivered the opinion of the court, that this bridge, situate in a principal highway, and used, as it so long was, for all persons as a public bridge, and being also of great public use and convenience, was and is a bridge repairable by the county of *Bucks*, in which it was, until the period of its late dilapidation and destruction, situate.

Bridge over a navigable cut parallel to a river fordable at its intersection of a highway; which cut rendered the highway impassable.

Rex v. *the Inhab. of the parts of Lindsey in the county of Lincoln*, 14 *East*, 317. The indictment was for not repairing a certain public and common bridge, in *Coningsby*, over the river *Bain*, at a place called *Butt's Ford*. The plea was, that the company of proprietors of the *Horncastle* navigation, in the county of *Lincoln*, mentioned in an act of the 32 *G.* 3. for their own use and benefit under the authority of that act, made a navigable cut near the side of the *Bain*, and communicating with it for the purpose of straightening its course; and, under the same act, erected the said bridge upon the said navigable cut, and not upon the ancient course of the river, no bridge being there before, or required there, until the making of the said cut; and that the said company have maintained and still maintain the said cut for their own benefit. The act referred to enacts, that the proprietors may make cuts near to the side of the *Bain* to straighten its course, and erect upon the same so many bridges as they shall think requisite for the purposes of the act; and from time to time may *alter, repair, amend, or discontinue the same*, or any of them. At the time of the passing of the act, the *Bain* intersected a common highway at *Bain's ford*; here the river was fordable, excepting in floods, and there had never been any bridge over it. The cut above-mentioned was made by the company under the act, and was 100 yards from *Butt's ford*. This cut rendered the highway impassable, and the company built over it the bridge in question. The bridge has never been repaired by the inhabitants of the parts of *Lindsey*; but by the company in the only instance in which it wanted repair. They also collect tolls upon the navigation. Lord *Ellenborough* C. J. The act authorises the company not only to alter, repair, and amend, but even to *discontinue* any of the works before authorised to be erected; amongst others, *any bridge*. And the inhabitants of a county can never have, by law, a permanent burthen thrown upon them to repair a bridge, of which they have not the permanent use and enjoyment secured to them. — *Grose* J. agreed. — *Le Blanc* J. after saying, that this was very like the case of *Rex* v. *The Inhab. of Kent*, said, that the authority given to the company to make the cut, which rendered the highway impassable without a bridge, must create an obligation in them to erect the bridge, though the word *authorise* in the act would not of itself create the obligation. — *Bayley* J. The bridge is rendered necessary for the purposes of the company, but not for the purposes of the inhabitants of the parts. Verdict and judgment for the defendants.

Rex v. *Kerrison*, 3 *M.* & *S.* 526. Where certain persons and their successors were authorised, by act of parliament, to make a river navigable, and to cut the soil of any person for making any new channel, &c. by virtue of which they cut through a highway, and

rendered it impassable, and a bridge was built over the cut, over which the public passed, and which had been repaired by the proprietors of the navigation; the court of K. B. held that the proprietors and not the county were liable to repair. After argument in this case, Lord *Ellenborough* C. J. said, " The undertakers of this navigation have a duty as it seems to me, arising out of the execution of their own powers under the act. The act enables them to cut new channels as occasion should require; and if occasion requires them to cut through a public highway, their duty is to furnish a substitute to the public by means of a bridge." — *Bayley* J. said, " This differs from the last case of *Rex* v. *Inhab. of Kent*, *ante*, p. 467. there the county derived a very essential benefit from the bridge; they had before but a passage through the ford, which is always an inconvenient one: but what benefit does this county derive from passing over a bridge instead of the solid highway." Judgment for the crown.

R. v. Kerrison

Rex v. *Inhab. of Oxfordshire*, *M.* 1812. 16 *East.* 223. Indictment against a county for not repairing a bridge. Plea, that *M.* is liable to repair the same, *ratione tenuræ*. Evidence, that the estate of *M.* was part of a larger estate, which part was purchased by *M.* of the former owner Lord *Cadogan*, who retained the rest, and as well before as since the purchase, repaired the bridge. — Lord *Ellenborough* C. J. The defendants have not maintained their plea. It is pleaded that *M.* and all those whose estate he hath, have immemorially repaired. Now, there is no evidence that he and those who had the estate have repaired, for it appears that since he purchased the estate another person has repaired. It would have been more correct to have pleaded that " he and those whose estate he hath with others, have repaired," instead of which, the burthen is cast on him impartibly without giving him the benefit of a contribution from Lord *Cadogan*. But I should be sorry to conclude the county from bringing forward their case, as it is clear they have never repaired. — The court directed that the rule should be drawn up for staying the judgment on payment of the costs of the prosecution; and Lord *Ellenborough* C. J. added, that if the public exigency required it, the county must repair, without prejudice to their case; and *Le Blanc* J. said that the county might proceed to indict the parties whom they contended to be liable.

Averment of immemorial repair, in plea of repair *ratione tenuræ.*

Rex v. *Mathias Kerrison*, 1 *M.* & *S.* 435. Indictment charging *an individual* with the repair of a bridge by reason of his being owner and proprietor of a certain navigation, is not equivalent to charging him *ratione tenuræ*, but is erroneous; and if judgment be given thereon, upon error brought, it will be reversed. It seems that a *count* charging him by reason of being owner of a navigation under a private act of parliament, must set forth the act.

How to charge a person *ratione tenuræ.*

Rex v. *Inhab. of the County of Northampton*, 2 *M.* & *S.* 262. The second count of this indictment, on which the verdict was entered for the crown, was for not repairing a public bridge over the river *Welland*, in a highway leading from *Northampton* to *Leicester*, used by the subjects of the king with their horses, carts, and carriages *at all such times as and when it hath been or is dangerous to pass through the river by the side of the bridge.* Plea, *not guilty*. At the trial before *Thompson* B., at the last assizes, it appeared that this bridge was used by the public at all times on

The inhabitants of a county upon a plea of *not guilty*, to an indictment for not repairing a public bridge, may give evidence of the bridge having been repaired

R. v. Northampton.

by private individuals.
A bridge may be a public bridge which is used by the public at all such times as are dangerous to pass through a river.

foot and with horses, but only occasionally with carriages, except in times of flood or frosts, when it was unsafe to pass through the river, at which times carriages always passed over the bridge. In ordinary times the carriage road went through the ford, and the bridge was sometimes barred against carriages by means of a post and chain which was locked. There was no doubt upon the evidence of the bridge being out of repair, but the counsel for the defendants proposed to give evidence to shew that the feoffees of certain estates had repaired the bridge, and that one *Rous*, as their agent, had the control of the key. To this it was objected, that repairs done by individuals could not be evidence to shew the bridge not a public bridge, which was the only issue upon these pleadings. The learned judge was of that opinion, and rejected the evidence. — A rule *nisi* for a new trial was moved upon the rejection of this evidence; and exception was also taken to the count, that it did not shew the bridge to be a public bridge, but only a bridge to be used on particular occasions, which could not be if it were a public highway; for there could not be a partial dedication to the public. — But Lord *Ellenborough* C. J. said, though it must be an absolute dedication to the public, still it might be definite as to time; with respect to the admissibility of the evidence his lordship said he doubted whether in the extreme rigour of correctness it ought not to have been received, though, certainly, if it had stood by itself it would have had but little effect. The only question was, whether this was a public bridge. Repairs done by an individual are *primâ facie* rather to be ascribed to motives of private interest in his own property, than as done for the public benefit; and if an inference might have been drawn from the fact, the jury ought to have had an opportunity of judging of that inference. He thought the evidence barely admissible, and that the learned judge would have exercised a more correct discretion by receiving it. R. A.

43 G. 3. c. 59.
Description of bridges inhabitants of counties shall be liable to repair.

But "for the more clearly ascertaining the description of bridges *hereafter to be erected*, which inhabitants of counties shall be liable to repair and maintain," it is enacted by stat. 43 *G.* 3. *c.* 59. § 5. "that no bridge hereafter to be erected or built in any county, by or at the expense of any individual or private person or persons, body politic or corporate, shall be deemed or taken to be a county bridge, which the inhabitants of any county shall be compellable or liable to maintain or repair, unless such bridge shall be erected in a substantial and commodious manner, under the direction or to the satisfaction of the county surveyor, or person appointed by the justices of the peace at their general quarter sessions assembled or by the justices of the peace of the county of *Lancaster*, at their annual general sessions; and which surveyor or person so appointed, is hereby required to superintend and inspect the erection of such bridge, when thereunto requested by the party or parties desirous of erecting the same; and in case the said party or parties shall be dissatisfied, the matter shall be determined by the said justices respectively at their next general quarter sessions, or at their annual general sessions in the county of *Lancaster*."

Act not to extend to bridges repaired by reason of tenure.

§ 7. Provided "that nothing herein contained shall extend to any bridges or roads which any person or persons, bodies politic or corporate, is, are, or shall be liable to maintain or repair by reason of tenure, or by prescription, or to alter or affect the right to repair such bridges or roads."

By stat. 22 *H.* 8. *c.* 5. § 2, 3. *Whereas in many places it cannot be known and proved what hundred, &c. town, parish, person, or body politic ought to repair bridges broken in the highways; in every such case the said bridges, if they be without a city or town corporate, shall be made by the inhabitants of the county; if within a city or town corporate, then by the inhabitants of such city or town corporate; if part be in one shire, city or town corporate, and part in another, or part within the limits of a city or town corporate, and part without, the inhabitants of the shire, cities or towns corporate, shall repair such part as lies within their limits.*

22 H. 8. c. 5.

Bridges broken in the highways.] This extendeth only to common bridges in the king's highways, and not to private bridges, to mills, or the like; the remedy in which case is not by indictment, but by action. 2 *Inst.* 701.

Within a city or town corporate.] It hath been questioned whether a borough, which hath no bridge within its own limits, be not liable to contribute to the repairs of a county bridge. 1 *Haw. c.* 77. § 19. 1 *Keb.* 68.

Where townships have enlarged a bridge, which they were before bound to repair as a foot-bridge, to a carriage-bridge, they shall be liable *pro ratâ. Rex* v. *W. R. of Yorkshire*, 2 *East.* 353. (n.) *ante*, p. 468.

By the inhabitants.] The persons to be charged by this act are comprehended under the word *inhabitants;* which word, being the largest word of the kind, is needful to be explained.

Inhabitants, who?

First, although a man be dwelling in an house, in a foreign county, city, or town corporate; yet if he hath lands in his own possession and manurance in the county, city or town corporate, where the decayed bridge is, he is an inhabitant, both where his person dwelleth, and where he hath lands in his own possession.

Secondly, if a man dwelleth in a foreign shire, city, or town corporate, and keepeth a house and servants in another shire, city, or town corporate, he is an inhabitant in each shire, city, or town corporate within this statute.

Thirdly, *Ex vi termini*, every person that dwelleth in any shire, city, or town corporate, though he hath but a personal residence, yet he is said in law to be an inhabitant, or a dweller there, as servants or the like; but this statute extendeth not to them, but to such householders who may be distrained for non-payment: and it would be infinite and impossible to tax every inhabitant being no householder.

Fourthly, every corporation and body politic, residing in any county, city, or town corporate, or having lands or tenements in any county, city, or town corporate, which they keep in their own hands and occupation, are said to be inhabitants there, within the purview of this statute.

Fifthly, an infant, that hath house or lands by descent or purchase, is liable to the public charge; and so is the husband of a feme covert. 2 *Inst.* 702.

Repair of house adjoining a bridge.

A tenant at will of an house, which adjoins to a common bridge, is bound to repair the house, so that the public be not prejudiced by the want of repair, although, being only tenant at will, he be not bound to repair as to his landlord. *Reg.* v. *Watson*, 2 *Ld. Raym.* 856. 1 *Salk.* 357. *S. C.*

Freehold in bridges.

The freehold of bridges is in him that hath the freehold of the soil; but the free passage is for all the king's liege people. 2 *Inst.* 705.

Where a person built and dedicated a bridge to the public, the property in the materials ceasing to be part of the bridge was held to revert to the original proprietor.

Harrison v. *Parker and another*, 6 *East*, 154. In this case, which was an action of trespass for taking and carrying away the plaintiff's goods, and to which the defendant pleaded not guilty; it appeared that the plaintiff, being lord of a manor, had contracted with one who was lord of an adjoining manor, for himself and his heirs, for liberty and licence to build a bridge over a river which divided the two manors, with liberty to lay the foundations in the close of the lordship, together with the free use for the plaintiff, &c. and all other persons to and from a certain town or parish from and to the said bridge, the said bridge to be kept in repair by the plaintiff and his heirs, and also a road (describing it) on each side thereof; and that the said bridge and roads should for ever be public highways, not subject to any toll. The bridge was built: the defendants took down a part of it, and carried away the stones for their own use. And it was held by the court, that a qualified property subsisted in the plaintiff after the dedication of the bridge to the public, which, upon the severance of the materials, became a perfect right of property in him; and that, therefore, the plaintiff might, as against a wrong doer, maintain this action. That the only thing given to the public was a right of passing over these materials in the form of a bridge; when they ceased to be a part of the bridge they reverted to the plaintiff, discharged of the right of user by the public.

1 G.4. c. 116. Destroying bridges.

By stat. 1 *G.* 4. *c.* 116. § 2. Such parts of all former acts relating to bridges as enact, that if any person or persons shall wilfully and maliciously blow up, pull down, or destroy any bridge or any part thereof, or attempt so to do; or unlawfully and without authority remove or take any works thereto belonging, or in anywise direct or procure the same to be done, such offender or offenders being thereof lawfully convicted, shall be adjudged guilty of felony, and shall suffer death as a felon, without benefit of clergy; shall from and after the passing of this act (*viz.* 25th *July* 1820) be, and the same are hereby repealed.

II. Power of the Leet to enquire thereof.

Decays of bridges are presentable in the leet or torn.—2 *Inst.* 701.

III. Power of the Justices in Sessions.

22 H.8. c.5.

By stat. 22 H. 8. c. 5. § 1. 5. *The justices of peace in every shire of this realm, franchise, city, or borough, or four of them at least* (1 Q.), *shall have power to inquire, hear, and determine in the general sessions all manner of annoyances of bridges broken in the highways, to the damage of the king's liege people, and to make such process and pains upon every presentment against such as ought to be charged to make or amend them, as the king's bench usually doth, or as it shall seem by their discretions to be necessary and convenient for the speedy amendment of such bridges.*

Four of them at the least.] If the bridge be within a franchise which hath not four justices and a sessions of its own, the justices of the county shall enquire; but if the franchise be a county of itself, and hath not four justices (1 Q.), it is not within this statute, but is left to the remedy which it had at common law. 2 *Inst.* 702.

And to make process.] By § 5. Where the bridge is in one shire, and the persons or lands which ought to be charged in another shire;

or where the bridge is within a city or town corporate, and the persons or lands that ought to be charged are out of the said city; the justices of such shire, city or town corporate shall have power to hear and determine such annoyances, being within the limits of their commission; and if the annoyance be presented, then to make process into every shire of the realm, against such as ought to repair the same, and to do further in every behalf as they might do, if the persons or lands chargeable were in the same shire, city or town corporate where the annoyance is.

22 H. 8. c. 5.

As the king's bench usually doth] The presentment at common law might be before the king's bench, or at the assizes. 2 *Inst.* 701.

The court of quarter sessions cannot impose more than one fine for the non-repair of a bridge.

Rex v. *The Inhab. of Machynlleth* and *Pennegoes*, *E.* 2 *G.* 4. 4 *B.* & *A.* 469. The following order of sessions of the county of *Montgomery* was removed by *certiorari* into the court of K. B.: "It is ordered, that the fine heretofore imposed by the court on the inhabitants of the township of *Machynlleth* and the parish of *Pennegoes*, for not repairing *Pontfelingerrig* bridge, be, and the same is hereby increased by the sum of 200*l.*" A rule *nisi* was obtained for quashing the order. It appeared from the affidavits that the defendants had been presented at the *January* sessions 1818, for the non-repair of the bridge in question; to which presentment they, at the same sessions, submitted, and a fine of 300*l.* was imposed and afterwards levied upon them. At *Michaelmas* sessions 1820, the fine not having been sufficient, the order in question was made, imposing a second fine of 200*l.* The court, after hearing counsel in support of the order of sessions, were of opinion, that the power of the sessions was at an end after the first fine, and that they had no jurisdiction to impose a second, and they referred to *Rex* v. *Inhabitants of Old Malton* (*a*) as an authority directly in point. Order of sessions quashed.

IV. Concerning the 300 Feet at the Ends of Bridges.

22 H. 8. c. 5.

By stat. 22 *H.* 8. *c.* 5. § 9. Such part and portion of the highways, as well within franchises as without, as lie next adjoining to any ends of any bridges, distant from any of the said ends by the space of 300 feet, shall be made, repaired, and amended as often as need shall require; and the justices, or four of them (1 *Q.*), shall have power

(*a*) *Holroyd* J. read the following MS. note of the case:—

The King against The Inhabitants of the Parish of Old Malton, Yorkshire, Sum. Ass. 9th *August*, 1794. *Cor. Lawrence* J.

This was an indictment for not repairing a highway. The defendants had submitted to a fine which had been apportioned between the parishioners and the trustees of the turnpike (the road indicted being turnpike), pursuant to the power given by the general turnpike act. *Holroyd* applied for a further fine, the whole fine being laid out on the way, and the way being still out of repair. *Lawrence* J. doubted his power to give any further fine, on the ground that the court had given their judgment; and though *Salk.* 358. (see S. C. 6 *Mod.* 163.) states that the judgment is not at an end by the defendants coming in and submitting to a fine; and that if the road is not put in repair, writs of *distringas* shall issue against the defendants till the road is completed; he held, that those writs are now the only remedy on the present indictment; that the fine is the punishment for the neglect and offence of which the defendants are indicted; and though the court may compel an actual repair, yet the punishment has been inflicted, and they cannot inflict a further punishment or fine; that the parish may be again indicted, and a fine imposed and apportioned on such indictment. Vide also 1 *Hawk.* c. 76. § 94.

22 H. 8. c. 5.

to inquire, hear and determine, in the general sessions, all manner of annoyances of and in such highways, so being and lying next adjoining to any ends of bridges, distant from any one of the ends of such bridges 300 feet, and to do in every thing concerning the making, repairing, and amending of such highways, in as ample manner as they may do for the making, repairing, and amending of bridges.

The county is by law bound *primâ facie*, to repair the road at the ends of every bridge, which bridge it is bound to repair; the statute has fixed the length at 300 feet. *Per* Ld. *Eldon* C. *R.* v. *Inhab. of W. R. of Yorkshire, Dom. Proc. M.* 44 *G.* 3. 5 *Taunt.* 284.

The inhabitants of a county in which a new bridge was built within 300 feet of an old bridge in another county, were held liable to repair such new bridge.

R. v. *Inhab. of Devonshire*, 14 *East*, 477. The county of *Devon* is divided from the county of *Dorset* by the river *Yarty*, over which there is a bridge maintained by *Dorset*, the inhabitants of which, in course, under stat. 22 *H.* 8. *c.* 5. maintained the road for 300 feet on the *Devonshire* side, from the bridge, as part of such bridge. At the distance of 150 feet from the bridge, on the same side, the road about thirty years ago led through a ford occasioned by a small stream which runs into the *Yarty*; but about that time, in order to avoid the inconvenience of the ford, a smaller bridge was built over it by an individual, which having been generally used by the public ever since, was considered as having been adopted by the county. The smaller bridge having fallen into decay, and requiring repair, the inhabitants of *Devon* were called upon to repair it: which they objected to, on the ground that being within 300 feet of the former bridge over the *Yarty*, which were repairable by *Dorset*, the inhabitants of *Devon* were no more bound to repair the smaller bridge, than they were the road for that distance before that bridge was built, though lying within the limit of their county. Whereupon this indictment was preferred against them for the non-repair of the smaller bridge, and a verdict passed for the crown. And upon a motion for a new trial, Lord *Ellenborough* C. J. said, Each is a substantive bridge in a different county, and the new bridge cannot be considered as an appendage to the other. The statute of *H.* 8. attaches equally on the inhabitants of each county in respect to its own bridge. It makes no difference that the new bridge was first built by an individual, if it were afterwards adopted by the public as of great public utility. While it continued a road, it was repairable as part of the old bridge; but now that there is a substantive bridge built on the *Devonshire* side, it is repairable as a bridge by the inhabitants of the county in which it is situate, according to the statute.

V. Indictment of Bridges; and herein, of the Pleading to the same, and other Matters relating to the Trial thereof.

12 G. 2. c. 29.

By stat. 12 *G.* 2. *c.* 29. § 13. *No money shall be applied to the repair of bridges, until presentment be made by the grand jury at the assizes or sessions of their insufficiency, inconveniency, or want of reparation.*

55 G. 3. c. 143.

But by stat. 55 *G.* 3. *c.* 143. § 5. County bridges, repaired under *contract*, may be repaired without presentment.

An indictment for not repairing a bridge ought to shew what sort of a bridge it is, whether for carts or carriages, or for horses or for footmen only. 2 *Ld. Raym.* 1175.

R. v. *Inhab. of the West Riding of Yorkshire*, 2 *East*, 348. In the indictment the bridge was alleged to be in the king's highway, and used for all his subjects. And Lord *Ellenborough* C. J. said, this was at least sufficient to throw the *onus* upon the inhabitants of the county of shewing who else was bound to repair, if they were not.

Note. — There was a special plea that certain trustees under a temporary act, built the bridge, &c. And to this plea there was a demurrer.

The same learned judge said, " Where it is stated to be used by the public, it cannot be presumed to be useless to them: but if intended to be objected to on the ground of inutility, it must be so stated in the plea." 2 *East*, 349, 350. — *Le Blanc* J. In the same case said, As to this not being expressly stated to be for the public benefit, it is sufficient when the indictment states that the bridge was used for all the king's subjects. *Id.* 354, 355.

If a man be indicted for that '*by reason of the tenure*' of certain lands he is bound to repair a bridge, it must be alleged where those lands lie. 2 *Hale*, 181.

R. v. *Sir John Bucknall*, 2 *Ld. Raym.* 804. Information for not repairing a bridge; it was alleged in the information that he ought to repair, ' because *he now is and for divers years past hath been lord of the manor of* B. &c.' And upon a motion in arrest of judgment, it was held, that although the defendant was lord of the manor, yet that was no reason that he should repair the bridge, but some particular charge ought to be shewn, as *ratione tenuræ*, or by prescription.

A corporation must be charged in the indictment as being bound by prescription. 13 *Rep.* 33.

Who may be made defendants.

Any particular inhabitant of a county, or tenant of land charged to the repairs of a bridge, may be made defendant to an indictment for not repairing it, and be liable to pay the whole fine assessed by the court, for the default of repairs, and shall be put to his remedy at law for a contribution from those who are bound to bear a proportionable share in the charge; for the necessity of the case requires the greatest expedition in cases of this nature; for bridges being of absolute necessity, are not to lie unrepaired till suits are determined. 1 *Haw. c.* 77. § 2.

Where a man is obliged to repair a bridge, his tenant for years, being in possession, will be obliged to do it; and if he fail he may be indictable for it. 2 *Ld. Raym.* 804.

Manor held by tenure of repairing a bridge and coming into possession of divers alienees.

If a manor be held by the service or tenure of repairing a common bridge or highway, and that manor afterwards comes to be divided into several hands; every one of these alienees being tenants of any parcel, either of the demesnes or services, shall be liable to the whole charge, and they are contributory among themselves. And though the lord of the manor might upon the several alienations agree to discharge those that purchased of him of such repairs, yet that shall not alter the remedy for the public, but only bind the lord and those that claim under him. As the whole manor, and every part of it, in the possession of one tenant, was once chargeable with the reparations, so it shall remain, notwithstanding any act of the proprietor: it shall not be

in his power to apportion the charge whereby the remedy for public benefit shall be made more difficult, or by alienations to persons unable, to render it, in respect of the parts which should come into such hands, quite frustrate. *R.* v. *Duchess of Buccleugh*, 1 *Salk.* 358.

What plea is good.

Of the plea.—It hath been resolved that it is not sufficient for the defendants to an indictment for not repairing a bridge, to excuse themselves, by shewing either that they are not bound to repair the whole, or any part of the bridge, without shewing what other person is bound to repair the same: and it is said that in such case the whole charge shall be laid upon such defendants, by reason of their ill plea. 1 *Haw. c.* 77. § 4.

R. v. *West Riding of Yorkshire,* 7 *East,* 588. 3 *Smith's Rep.* 467. This was an indictment for not repairing a highway. A special verdict was found. The indictment alleged that a certain part of the highway, at the township of *Quick,* in the West Riding, &c. to wit, a certain part thereof lying next adjoining the west end of a certain public bridge there called *Tamewater Bridge,* and within the distance of 300 feet thereof, &c. &c. was and yet is very ruinous, &c. &c. And that the inhabitants of the West Riding of, &c. of right ought to repair, &c. *Plea, n. g.* The evidence (as far as it is material to this point) was, that the township of *Quick* lay in the parish of *Saddleworth* in the said Riding, which parish had been immemorially divided into four districts called *Mears,* in one of which mears called *Shaw Mear,* the highway in *Quick* (hereinbefore mentioned) lay; and that the 300 feet at the other end of the bridge lay in another mear; and that each mear had respectively repaired the said respective highways, &c. &c. The main argument was upon the liability of the county to repair these *ends* of 300 feet each, in the same manner as they were liable to repair the bridge. This was decided in the affirmative. But in arguing, it was said by Mr. *Holroyd,* who was counsel for the crown, and not contradicted by the court, that no question could arise as to any special liability of the respective mears, because the general issue only was pleaded; and any question of that sort, he said, could only be raised by a special plea. He cited *R.* v. *City of Norwich,* 1 *Str.* 180. 182. The counsel for the defendants argued against this, upon the principle of assuming that these *ends* were *highways* and not parts of the bridge. This, however, the court overruled.

Who ought to be jurors.

It seemeth that no inhabitant of a county ought to be a *juror,* for the trial of an issue, whether the county be bound to such repairs or not; and therefore the jury must come from some adjacent county. 1 *Haw. c.* 77. § 6.

What justices may try the indictment.

And it seemeth that the same objection may lie as to the *justices,* where they are (as it may probably happen) all interested. In which case it seemeth that the trial shall be in the next county. For where an impartial trial cannot be had in the proper county, it shall be tried as near to the same as may be. As in the case of *R.* v. *the Inhab. of the County of the City of Norwich,* concerning a county bridge, the trial was in *Suffolk.* 2 *Burr.* 859, 860.

1 Ann. st. 1. c. 18.

Inhabitants witnesses.

But now, by a special statute, *viz.* 1 *Ann. st.* 1. *c.* 18. an inhabitant of the county in such case may be a witness.

Fines, how applied.

By § 4. No fine, issue, penalty, or forfeiture, upon any presentment, or indictment, for not repairing bridges, or the highways at

the end of bridges, shall be returned into the exchequer, but shall be paid to the treasurer, to be applied towards the said repairs and not otherwise.

1 Ann. st. 1. c. 18.

By § 5. No presentment or indictment for not repairing bridges, or highways at the ends of bridges, shall be removed by *certiorari* out of the county into another court.

Removal by certiorari.

Removed by certiorari.] In the case of *R.* v. *Inhabitants of Cumberland*, 6 *T. R.* 194. the chief question was, Whether an indictment for not repairing a bridge could be removed by *certiorari* or not? To shew that it could *not*, the defendants relied on the above clause; but the prosecutor contended that it was intended only to prevent *defendants* removing such presentments or indictments, and did not take away the *certiorari* from the *prosecutor.* —Ld. *Kenyon* C. J. stated several cases in which informations and indictments for non-repair of bridges had been removed by writs of *certiorari* applied for by the prosecutors. And that therefore the court were of opinion that the *certiorari* was properly issued. He also stated, that if it were otherwise it would be an anomalous case in the law of *England*, for that in these cases the defendants are the inhabitants of a county, and if the indictments cannot be removed by *certiorari*, they must be tried by the very persons who are parties to the cause.

This case afterwards came by writ of error before the House of Lords, where the above judgment was affirmed. 3 *Bos. & Pull.* 354.

A *certiorari* lies to remove an order made by the justices concerning the repair of a bridge, pursuant to a private act of parliament; and the justices ought to return the private act upon which their order is founded. *Dalt.* 504.

From sessions.

R. v. *the Inhab. of Hamworth*, 2 *Str.* 900. Upon motion to quash a *certiorari* to remove an indictment against the defendants at sessions, for not repairing a bridge, it was insisted, that by stat. 1 *Ann. c.* 18. the *certiorari* is taken away. To which it was answered, and resolved by the court, that this act extendeth only to bridges where the county is charged to repair; and that where a private person or parish is charged, and the right will come in question, the act of the 5 & 6 *W. c.* 11. hath allowed the granting a *certiorari*. And therefore they refused to quash.

VI. Charges and Manner of Repairing.

12 G. 2. c. 29. Charges of repairing.

By stat. 12 *G.* 2. *c.* 29. § 1. The charges of repairing and amending bridges, and highways at the ends of bridges, shall be paid out of the general county rates. (See 52 *G.* 3. *c.* 110. *post*, § VII.)

22 H. 8. c. 5. Appointing surveyors; who are

By stat. 22 *H.* 8. *c.* 5. § 4. The justices of peace within the shires or ridings wherein such decayed bridges be out of cities and towns corporate; and if it be within cities or towns corporate, then the justices of peace within every such city, &c. or four of them at the least (1 *Q.*) within the limits of their commissions and authorities, shall have power to name and appoint two surveyors, with salaries, to see the bridges amended.

usually the high constables.

And this business of surveying the bridges, for the more convenience, is usually annexed by the justices to the office of the high constables; for which they have by this clause power to allow them salaries.

43 G. 3. c. 59.

And by stat. 43 *G.* 3. c. 59. (called Lord *Gower*'s act,) after re-

43 G.3. c.59.

citing, that whereas the inhabitants of counties in *England*, "are by law bound to repair, support, and maintain the public bridges, commonly called *county bridges*, within such counties respectively, and the roads at each of the ends thereof for limited distances; but the laws empowering them so to do are insufficient and defective: And whereas doubts have arisen how far the said inhabitants are liable to improve such bridges when they are not sufficiently commodious for the public," it is enacted, "that it shall be lawful to and for the surveyor of bridges and other public works, in each and every county respectively within *England*, appointed or to be appointed by the justices at any general quarter sessions of the peace to be holden for such county, and the said surveyor is hereby authorised and empowered to search for, take, and carry away gravel, stone, sand, and other materials, for the repair of such bridges and roads at the ends thereof, as the inhabitants of counties are bound to repair; and to remove obstructions and annoyances from such bridges and roads, in such and the same manner as the surveyor or surveyors of any common highway within this kingdom, is or are by stat. 13 *G.* 3. *c.* 78. authorised to do: and the several powers and authorities thereby vested in the surveyor or surveyors of highways, as well for the getting of materials as the preventing and removing of all nuisances and annoyances from such bridges and roads, shall be, and the same are hereby vested in the surveyor and surveyors of county bridges, and the roads at the ends thereof as aforesaid; and the several penalties, forfeitures, matters, and things, in the said act contained, relating to highways, shall be and the same are hereby extended and applied, as far as the same are applicable, to such bridges, and the roads at the ends thereof as aforesaid, as fully and effectually as if the same and every part thereof were herein repeated and re-enacted; the said surveyor or surveyors making satisfaction and compensation for all trespass and damage done in the execution of the powers of this act, in such and the same manner as the surveyors of highways are required to make in and by the said act of the 13 *G.* 3. *c.* 78."

Surveyors of county bridges empowered to get materials for the repair of bridges in the same manner as surveyors of highways, under 13 G.3. c.78.

Tools and materials provided by the quarter sessions vested in the surveyor.

§ 3. And the right and property of all tools, implements, timber, bricks, stones, gravel, and other materials, purchased, gotten, or had, or to be purchased, gotten, or had by or by the order of justices in counties, or the surveyor of county bridges for the time being, or in any respect belonging to such counties, shall be vested in such surveyor for the time being; in whom, upon any action or indictment being commenced or prosecuted, such property may be laid.

54 G.3. c.90.

And by stat. 54 *G.* 3. *c.* 90. § 2. All the powers and provisions of stat. 43 *G.* 3. *c.* 59. (except as to bridges hereafter to be erected) are extended "as well to bridges and the roads at the ends thereof repaired by the inhabitants of hundreds, and other general divisions in the nature of hundreds, as to bridges and the roads at the ends thereof repaired by the inhabitants of counties."

55 G.3. c.143.

And by stat. 55 *G.* 3. *c.* 143 § 1. After reciting the abovementioned provisions of statutes 43 *G.* 3. *c.* 59. § 1. and 54 *G.* 3. *c.* 90., and that whereas "it is expedient, that surveyors of county bridges and other persons, being under contract for the rebuilding or repairing such bridges, or bridges repaired by the inhabitants of hundreds and other general divisions of counties in the nature of hundreds, should have a more extended power for

procuring materials than is at present vested in such surveyors of county bridges, by the operation of the said first recited act, so far as relates to the procuring of stone for such purposes from quarries;" it is enacted, that "it shall and may be lawful to and for every surveyor of such bridges in each and every county within *England*, appointed or to be appointed by the justices at any general quarter sessions of the peace to be holden for such county; and also to and for the bridge master or all and every persons or person who may at the passing of this act, or from and after the passing thereof, be under contract for the rebuilding or repairing of any public bridge, built or repaired at the expence of the inhabitants of any such county, hundred, or general division as aforesaid; and such surveyor and surveyors, and also such other person or persons, are hereby authorised and empowered, with the consent and by the order of two justices of the peace, acting for the county in which such bridge is intended to be rebuilt or repaired, first had and obtained for that purpose, to search for, work, dig, get, and carry away any stone in, from, or out of any quarry or quarries whatsoever within the county or counties to which such bridge may belong; other than and except such quarries as may be situated within a garden, yard, avenue to a house, lawn, park, paddock or inclosed plantation, or as may now or hereafter have ornamental timber trees growing thereon, without the licence or consent of the owner or owners of such quarry or quarries, as such surveyor or other person or persons shall judge necessary for the rebuilding or repairing of such bridges respectively, provided such quarry or quarries shall have been worked within the last three years preceding the time when such bridge shall be about to be rebuilt or repaired; the said surveyor or other person or persons making such satisfaction and recompense for the value of such stone, and also for the damage to be done to such quarry or quarries by the getting and carrying away the same, as shall be agreed upon between him or them, and the owner, occupier, or other person interested in such quarry or quarries respectively; and in case they cannot agree, or such owner or occupier or other person interested shall refuse to treat, then and in every such case the justices of the peace at their general or quarter sessions, or any two or more of them appointed for that purpose, fourteen days' notice having been given to the owner or his agent of the intention to require a jury, shall cause the value of such stones and amount of such damage to be enquired into and ascertained by a jury of indifferent men of the county, riding, division, city, town, liberty, or precinct wherein the same shall be situated; and to that end shall summon and call before such jury, and examine upon oath (which oath any two or more of such justices of the peace is and are hereby empowered to administer) any person or persons whomsoever; and such justices of the peace, or any two of them, shall, by ordering a view or otherwise, use all ways and means for the information of themselves and of such jury in the premises; and when such jury shall have enquired of and ascertained the value of such stones and amount of such damage; the said justices of the peace shall thereupon order that the sum or sums which shall so appear to be the value of such stones and amount of such damage shall be paid; which verdict or inquisition and order shall be filed of re-

55 G.3. c.143.

Surveyors of county bridges, and other persons employed under contracts, empowered to take stones for the repair of county bridges.

Consent and order of two justices of the peace necessary.

Quarries situated in gardens and pleasure grounds, not to be used without consent of the owners.

Satisfaction to be made for stone, and damage done.

In case of refusal to treat, justices at general or quarter sessions shall cause the value of the stones, and amount of the damage done, to be ascertained by a jury.

Witnesses called before the jury, may be examined upon oath.

55 G.3. c.148. cord by the clerk of the peace, or other officer having the custody of the records of the said county, riding, division, city, town, liberty, or precinct, and shall be final and conclusive to all intents and purposes whatsoever, against all parties and persons whomsoever claiming or to claim in possession, remainder, reversion, or otherwise, their heirs and successors, as well absent as present, infants, lunatics, idiots, and persons under coverture, or any other disability whatsoever, corporations, guardians, committees, husbands, trustees, and attornies, or any other person or persons whomsoever."

Justices of the peace may require sheriffs or bailiffs to return juries.

§ 2. "And for the summoning and returning such juries," it is enacted, "that such justices of the peace, or any two of them, may issue their warrant or warrants to the sheriff or bailiff of any particular county, riding, division, city, town, liberty, or precinct, within the limits of which the quarry or quarries shall be situated, requiring him to impannel, summon, and return an indifferent jury of 24 persons, qualified to serve on juries, to appear before the said justices, or any two of them, at such time and place as in such warrant or warrants shall be appointed; and such sheriff or bailiff is and are hereby required to impannel, summon, and return such number of persons accordingly; and out of the persons so impannelled, summoned, and returned, or out of such of them as shall appear upon such summons, the justices of the peace, or any two of them, shall, and they are hereby empowered and required to draw by ballot, and to swear or cause to be sworn, twelve men, who shall be the jury for the purposes aforesaid; and in default of a sufficient number of jurymen so returned, the said sheriff or bailiff shall take such other honest and indifferent men of the by-standers, or that can speedily be procured to attend that service, to make up the number of 12; and all persons concerned shall have their lawful challenges against any of the said jurymen when they come to be sworn; and the said justices of the peace, or any two of them, shall have power from time to time to impose a fine or fines on such sheriff or bailiff, or his deputy or deputies, making default in the premises, and on any of the persons who shall be summoned and returned on such jury, and who shall not appear, or appearing shall refuse to be sworn on the said jury, or being sworn, shall refuse to give or shall not give a verdict, or shall in any other manner wilfully neglect his or their duty therein, and also on any person who being summoned and required to give evidence before the said jury, shall refuse or neglect to appear, or appearing shall refuse to be sworn or to give evidence, so that no such fine be more than 10*l.* nor less than 20*s.*, on any one person for one offence."

Jury.

Penalty on jury refusing to appear or to be sworn, and on persons summoned to attend, refusing to give evidence.

Expenses of the jury, how to be defrayed.

§ 3. Enacts, "that in case any jury shall give in and deliver a verdict for more money as the value of such stones and amount of such damage, than what shall have been offered for the purchase thereof by such surveyor or other person or persons as aforesaid, the costs and expenses of summoning and maintaining the jury and witnesses shall be borne and paid out of the rates to be collected within such county respectively; but if such jury shall give in and deliver a verdict for no more or for less money than the money which shall have been so offered by such surveyor or other person or persons as aforesaid, then the costs and expenses of summoning and maintaining the said jury and witnesses shall be

borne and paid by the person or persons with whom such controversy or dispute touching the value of such stones and amount of such damage shall arise, and shall be levied by the warrant of one of the said justices, by distress and sale of the goods and chattels of the person or persons made liable to the payment thereof."

55 G. 3. c. 143.

§ 4. Provided, "That if any person shall think himself aggrieved by any thing done in pursuance of this act, such person may, within the space of three calendar months next after the cause of complaint shall have arisen, appeal to the justices of the peace at any general quarter sessions of the peace to be holden for the limit wherein the cause of complaint shall arise, every such appellant first giving 14 days' notice at least in writing, of his intention to bring such appeal, and of the cause or matter thereof, to the person or persons against whom such complaint shall be made, and within three days next after such notice entering into a recognizance before some justice of the peace acting for the county wherein the cause of complaint shall arise, with two sufficient sureties conditioned to try such appeal, and to abide by the order of and pay such costs as shall be awarded by the justices at such session aforesaid; and the said justices at such session, upon due proof of such notice being given as aforesaid, and of the entering into such recognizance, shall hear and finally determine the cause and matter of every such appeal in a summary way, and make such award to the party appealing or appealed against, as the said justices shall think proper; and the determination of such justices so assembled shall be binding and conclusive to all intents and purposes."

Persons aggrieved may appeal to justices assembled in general quarter sessions.

Appellant to enter into recognizance.

Justices to determine the matter of appeal in a summary way.

It seemeth to be clear that those who are bound to repair bridges, must make them of such height and strength as shall be answerable to the course of the water, whether it continue in the old channel, or make a new one. 1 *Haw.* c. 77. § 1.

Manner of repairing.

And persons are not trespassers for entering on any adjoining lands for repairing bridges, or laying thereon the requisite materials.

May enter on the lands adjoining.

In *Rex* v. *Justices of Glamorganshire*, 5 *T. R.* 279. *Buller* J. said, "As to the power of justices to change roads, by changing the local situation of a bridge, there certainly are old cases against it, and they were properly decided; because previous to stat. 14 *G.* 2. *c.* 33. the sessions had no power to change the situation of bridges; but that act impliedly gives them that power, for it enables them to purchase lands adjoining any county bridge, *for the more commodious enlarging and convenient rebuilding the same.* This, therefore, impliedly gives them the power of altering the position of the bridge to suit the convenience of the public." *Vide* stat. 43 *G.* 3. *c.* 59. *post*, p. 484.

Changing the situation of bridges.

And in one case the court strongly intimated, that if a bridge used for carriages, though formerly adequate to the purposes intended, were not now of sufficient width to meet the public exigencies, owing to the increased width of carriages, the burden of widening it must be borne by those who are bound to repair the bridge. And Lord *Kenyon* C. J. in giving the judgment in this case, said, that upon this question there could not be entertained much doubt. *Rex* v. *Inhab. of Cumberland*, 6 *T. R.* 194. *ante. See also Rex* v. *W. R. of Yorkshire, ante.*

Widening bridges.

However, where the same case came, by error, before the house of lords, the lord chancellor (Ld. *Eldon*) expressed great doubts whether the same persons who are bound to repair a bridge are also bound to widen it, if the exigencies of the public should require it. *Inhab. of Cumberland* v. *The King; in Error.*—3 *Bos. & Pull.* 354.

43 G. 3. c. 59. Quarter sessions may alter the situation of county bridges, and roads at the end thereof, or widen the same.

The defects in the laws for repairing and rebuilding county bridges, by enabling the justices at sessions to purchase lands under certain circumstances for such purposes, (which was in some degree supplied by stat. 14 *G.* 2. *c.* 33. § 1.) are more completely remedied by stat. 43 *G.* 3. *c.* 59. § 2. by which it is enacted, "That where any bridge or bridges, or roads at the ends thereof, repaired at the expense of any county, shall be narrow and incommodious, it shall and may be lawful to and for the said justices at any of their general quarter sessions, to order and direct such bridge or bridges, and roads, to be widened, improved, and made commodious for the public; and that where any bridge or bridges, repaired at the expense of any county, shall be so much in decay as to render the taking the same wholly down necessary or expedient, it shall and may be lawful to and for the said justices, at any of their said general quarter sessions, to order and direct the same to be rebuilt, either on the old scite or situation, or on any new one more convenient to the public, contiguous to or within two hundred yards of the former one, as to such justices shall seem meet; and if, for the purpose of altering the situation, or of widening or enlarging any such bridge or bridges, road or roads as aforesaid, it shall be necessary to purchase any land or ground, [or by stat. 54 *G.* 3. *c.* 90. 'any building or buildings, or other erections,'] it shall and may be lawful for such county surveyor or surveyors, by and under the direction of such justices at their general quarter sessions as aforesaid, to set out and ascertain the same, not exceeding in the whole one acre at any one such bridge as aforesaid, and to contract and agree with the owner or owners of such land, and persons interested therein, for the purchase thereof, either by a sum in gross, or by an annual rent, at the option of such owner or owners; and if the said surveyor or surveyors cannot agree with the said owner or owners for the purchase thereof, or the recompence to be made for the same, or by reason of such owner or owners not being to be found, shall be prevented from treating, then and in every such case, the said justices in their general quarter sessions shall impannel a jury, and assess the compensation and satisfaction for such land, and for the trespass and damage to be done by the execution of the powers of this act, in the same manner as they are authorised and empowered to do by the said above-mentioned act of the 13 *G.* 3. *c.* 78. in relation to highways; and all and every the clauses, powers, provisions, exemptions, penalties, matters, and things, in the said act contained, as well with respect to impannelling juries, examining and swearing witnesses, payments of expenses, enabling bodies politic, corporate, and collegiate, and other incapacitated persons, to sell and convey, and all other the powers and provisions of the said act, shall be, and the same are hereby extended and applied to the works by this act authorised to be done and performed, as far as the same are applicable, as fully and effectually, to all intents and purposes, as if

54 G. 3. c. 90.

the same were herein particularly repeated and re-enacted: *Provided*, that no money shall be applied to the amendment or alteration of any such bridge or bridges, until presentment shall have been made of the insufficiency, inconveniency, or want of reparation of such bridge or bridges, in pursuance of some or one of the statutes made and now in force concerning public bridges."

43 G. 3. c. 59. Presentment to be made.

§ 4. And the inhabitants of counties shall and may sue for any damages done to bridges and other works maintained and repaired at the expence of such counties respectively, and for the recovering of any property belonging to such counties, in the name of their surveyor, and also shall and may be sued in the name of such surveyor; and no action or prosecution to be brought or commenced by or against the inhabitants of counties, by virtue of this act, in the name of the said surveyor, shall abate or be discontinued by the death or removal of such surveyor, or by the act of the surveyor, without the consent of the justices at their general quarter sessions, but the surveyor for the time being shall be deemed the plaintiff or defendant in such actions, as the case may be: Provided, that every such surveyor in whose name any action or suit should be so commenced, prosecuted, or defended, shall be reimbursed and paid out of the monies in the hands of the treasurer of the public stock of such county respectively, all such costs and charges as he shall be put unto or become chargeable with by reason of his being so made plaintiff or defendant therein; and also all the costs and charges of prosecuting any indictment or indictments, or other proceedings against any person or persons whomsoever.

Inhabitants of counties may sue for damages done to bridges in the name of the surveyor.

§ 6. All orders and proceedings within the county of *York*, relative to county bridges, shall in future be made and had by the justices of the respective ridings, assembled at the annual and general quarter sessions holden the first whole week after *Easter*, and at no other sessions whatever, within such ridings, except at such adjournment as shall be made at the above annual and general quarter sessions, so holden as aforesaid, for the express purpose of carrying such orders into effect; provided, that it shall be lawful for any two justices of the said ridings respectively, in cases of emergency, to give such orders for making temporary bridges, or such temporary repairs as shall be necessary for the temporary accommodation of the public.

Orders respecting county bridges in the county of *York*, to be made by the sessions held the first week after Easter.

Rex v. *The Justices of Dorset and others*, 15 *East*, 594. The justices of *Dorset* having under stat. 43 *G.* 3. *c.* 59. contracted for the building of a new bridge in a different site in lieu of the old one, which was ruinous; and having directed the old bridge to be taken down before the new one was passable, for the benefit of the old materials to be used by the contractor in finishing the new bridge; the court of K. B. refused a *writ of prohibition* to them to restrain them from pulling down the old before the new bridge was passable; though there were strong affidavits of the inconvenience and loss to be sustained by the neighbourhood in being obliged to use a roundabout way in the interval; referring the complainants to the ordinary remedy by indictment, if the pulling down the old bridge under these circumstances were a nuisance; and seeing no occasion to interfere by applying a

prompt remedy of a novel kind in modern practice. Ld. *Ellenborough* C. J. asked, (15 *East*, 600.) What must have been the case if the magistrates had ordered the bridge to be rebuilt on the old site; when it would have been impossible to continue the old bridge standing until the new one was finished?

3 G.4. c.126. Materials for repairing bridges.

By stat. 3 *G*. 4. *c*. 126. § 32. Materials for the repairs of bridges carried along a turnpike road are exempted from toll. See *Osmond* v. *Widdicombe*, 2 *B*. & *A*. 49. *Deh*. 83. n. (*g*), and stat. 3 *G*. 4. *c*. 126. § 32. Vol. II. tit. Highways (Turnpike), p. 974.

VII. Contracting for a Term of Years.

12 G.2. c.29.

By stat. 12 *G*. 2. *c*. 29. § 14. When any public bridges, ramparts, banks, or cops, or other works, are to be repaired at the expence of the county, city, riding, &c. the justices at their general or quarter sessions, after presentment made by the grand jury, of want of reparation thereof, may contract with any person for rebuilding, repairing, and amending the same for any term not exceeding seven years at a certain annual sum.

In order to which they shall at their general quarter sessions give public notice of their intention of contracting with any person for rebuilding, repairing, and amending the same.

And such contracts shall be made at the most reasonable price which shall be proposed by the contractors; who shall give sufficient security for the due performance thereof to the clerk of the peace, or the town clerk, or chief officer of such county, &c.

And all contracts when agreed to, and all orders relating thereto, shall be entered in a book to be kept by the clerk of the peace, &c. for that purpose; who shall keep the same amongst the records of the county, &c. to be inspected by any of the justices within their limits, at all seasonable times, and by any person employed by any parish or place, contributing to the same, without fee.

52 G.3. c.110.

By stat. 52 *G*. 3. *c*. 110. § 1. reciting, that whereas by stat. 12 *G*. 2. *c*. 29. "no part of the money to be raised and collected in pursuance of that act shall be applied to the repair of any bridges, gaols, prisons, or houses of correction, until presentments be made, by the respective grand juries at the assize, great sessions, general gaol delivery, or general or quarter sessions of the peace, held for any county, riding, division, city, town corporate, or liberty, of the insufficiency, inconveniency, or want of reparation of their bridges, gaols, prisons, or houses of correction;" and that "when any public bridges, ramparts, banks, or cops, or other works, are to be repaired at the expence of any county, city," &c. "it shall and may be lawful to and for the justices of the peace, at their general or quarter sessions respectively, or the greater part of them then and there assembled, if they think proper and convenient, after presentment to be made as aforesaid of the want of reparation of such bridges, ramparts, banks, or cops, to contract and agree with any person or persons for rebuilding, repairing, and amending of such bridges, ramparts, banks, or cops, as shall be within their respective counties," &c. "and all other works which are to be repaired and done by assessment on the respective counties," &c. "for any term or

terms of years, not exceeding seven years, at a certain annual sum, payment, or allowance for the same, such contractor giving sufficient security for the due performance thereof to the respective clerk of the peace for the time being, or the town clerk, high bailiff, or chief officer of any city, town corporate, or liberty; and that such justices, at their respective general or quarter sessions, shall give public notice of their intention of contracting for rebuilding, repairing, and amending the bridges, ramparts, banks, or cops, and other works aforesaid, and that such contracts shall be made at the most reasonable price which shall be proposed by such contractors respectively; and that all contracts, when agreed to, and all orders relating thereto, shall be entered in a book, to be kept by the respective clerk of the peace for the time being, or the town clerk, high bailiff, or chief officer of any city, town corporate, or liberty, for that purpose, who is and are hereby required to keep them amongst the records of such county," &c. "to be from time to time inspected at all seasonable times by any of the said justices within the limits of their commissions, and by any person or persons employed or to be employed by any parish, township, or place, contributing to the purposes of this act, without fee or reward: and whereas great expence in the repairs of county bridges, ramparts, banks, cops, or other works appertaining to the same, and of the roads over the same, and of so much of the roads at the ends thereof as by law is to be repaired at the expence of any county, riding," &c. "and great inconvenience to the public may be often in a great measure prevented by timely and immediate repair of any inconsiderable damage, injury, defect, or sudden want of repair or amendment of the same, without the delay which must generally arise from the necessity imposed by the aforesaid act, of a presentment by the grand jury at the assize, great sessions, or general or quarter sessions of the peace held for any county, city," &c. "of the want of reparation of the same; by means of which delay the aforesaid want of repair is often very much increased, to the great expence of the county, and great inconvenience of the public: and whereas it is also expedient that the justices of the peace of any county, city," &c. "at their general quarter sessions respectively, before any presentment shall have been made as aforesaid, as directed by the aforesaid act, of the want of repair of such roads, should be enabled without any such presentment to contract and agree with certain persons hereinafter mentioned, for the repairing and amending of the same; and also for keeping the same in repair when so repaired and amended;" *it is enacted*, "that it shall and may be lawful for the justices of the peace of any county, city," &c. "at their general quarter sessions or great sessions respectively, to be holden in the week next after the clause of *Easter*, or the greater part of them then and there assembled, to appoint annually two or more justices acting in and for any division of justices in such county, city," &c. "in or near which any such county bridge, or any bridge which is in part a county bridge, ramparts, banks, cops, or other works appertaining to the same, or any part or parts thereof, or the roads over the same, or so much of the roads at the ends thereof as by law is to be repaired at the expence of any county, city," &c. "shall be

52 G.3. c.110.

Quarter sessions may appoint annually two or more justices near to superintend roads and bridges.

52 G.3. c.110.

situate, to superintend the same; and whenever it shall appear on their own inspection to be necessary for the purpose of preventing the further decay and injury of the same, to order any immediate repairs or amendments to be done to the same or to any part thereof; but it shall and may be lawful for any two justices so to be appointed as aforesaid, by a written order (A), signed by their hands respectively, to order such immediate repairs to be done by such person as to them shall seem fit:" Provided, "that in no case the sum to be expended by them in such repairs shall exceed the sum of 20*l.*; and further, that such appointments of such justices as aforesaid shall remain in force until one week after the following *Easter* sessions respectively; and that in case of the death of or removal of, or refusal to act by any such justice so appointed as aforesaid, the said court of general quarter sessions or great sessions may at any other of the four quarterly sessions appoint any other justice to act for the remainder of the then current year, in the place of any such justice so dying, removing, or refusing to act as aforesaid."

A.

And they may expend 20*l.* The two justices to remain in office for one year, finishing one week after quarter sessions.

Quarter sessions to order payment for repairs.

§ 2. The justices of the peace of any county, city, &c. "at the general quarter sessions or great sessions which shall next happen after such repairs so ordered to be made by such justices so appointed as aforesaid shall be completed, or the greater part of them then and there assembled," may "order the payment of such sum or sums of money not exceeding 10*l.* as shall be sufficient to pay for such repairs, to be made out of the county rate, to such persons who shall have so repaired the same, by such order of such justices as aforesaid, although no presentment shall have been made by any grand jury at the assize, great sessions, or general quarter sessions of the peace of any county, city," &c. "in which such repairs shall have been done, of the want of such reparation, as by the said" stat. 12 *G.* 2. was directed: "Provided nevertheless, that before such payment be ordered to be made as aforesaid, a certificate (B) be returned to such justices so assembled at such last-mentioned sessions, signed by two at the least of such justices so appointed as aforesaid, who shall have so ordered such repairs as aforesaid, stating the nature of such repairs, and the defects, damag[illegible] or injuries which they had so ordered to be repaired, and their reason for so ordering such immediate repairs as aforesaid: Provided also, that such justices so assembled as last aforesaid be satisfied by the parties concerned that the charges made by them for such repairs are reasonable and just."

Not exceeding 10*l.*

Certificate signed by two of the said justices.

B.

Justices may contract for the repair of bridges.

§ 5. After *July* 1. 1812, "it shall and may be lawful for the justices of the peace of any county, city," &c. "at their general quarter sessions respectively, or the greater part of them then and there assembled, if they shall think proper and convenient, to contract and agree with the commissioner or trustee of any turnpike road within the said county," &c. "or with their surveyor or clerk, or with both their surveyor and clerk, or with the surveyor or surveyors of the highway of any parish, place, or tything within the said county," &c. "respectively, or with any other persons, for the maintaining and keeping in repair roads over any county bridges, and of so much of the roads at the ending thereof as by law is to be repaired at the expense of any such county, &c. or

any part of the same, for any term not exceeding seven years, nor less than one, although no presentment shall have been made as directed by the said" stat. 12 *G.* 2. " of the insufficiency, inconveniency, decay, or want of repair of the same; subject, however, to all the rules," &c. required by the said stat. 12 *G.* 2. " in case where the same shall have been presented or directed by that act."

55 G.3. c.143. Enabling justices to contract for the repair of county bridges, &c.

And by stat. 55 *G.* 3. *c.* 143. § 5. reciting, that whereas it is expedient that the powers contained in stat. 43 *G.* 3. *c.* 59. for authorising the justices of the peace of any county, city, riding, division, town corporate, or liberty, at their general quarter session of the peace, to contract for maintaining and keeping in repair roads over county bridges, and so much of the roads at the ending thereof as by law is to be repaired at the expense of counties, although no presentment shall have been made of the want of repair, as directed by an act passed in the twelfth year of his late majesty king *George* the second, intituled " An act for the more easy assessing, collecting, and levying of county rates," (12 *G.* 2. *c.* 29.) should be extended to the bridges as well as to the roads at the end thereof; it is enacted, that " it shall and may be lawful to and for the justices of the peace of any county, city, riding, division, town corporate or liberty, at their general quarter sessions respectively, to contract and agree, or to authorise any other person or persons to contract and agree, with any person or persons, for the maintaining and keeping in repair any county or hundred bridge, and the road over such county or hundred bridge, and so much of the road at the ends thereof as are by law liable to be repaired at the expence of any such county, hundred, city, riding, division, town corporate, or liberty, or any part of the same; and the said justices are hereby empowered to order such sum or sums of money as may be contracted for and agreed to be paid for the repairing, amending, and supporting such bridges, and the roads over the same, or the ends thereof, to be paid (in cases where the county is liable to the repair thereof) by the treasurer of the county out of the county rate, or (in cases where the hundred is liable to the repair of the same) by the bridge master (or other public officer charged with the repair of bridges) of the hundred by which such bridge is liable to be repaired, for any term not exceeding seven years, nor less than one, although no presentment of the insufficiency, decay, or want of repair of the same shall have been made, and although no public notice shall have been given by the said justices, at their respective general or quarter session, of their intention to contract for the repair of such bridges, or the roads at the ends thereof, as respectively directed by the said act of the twelfth year of his late majesty king *George* the second; provided nevertheless, that before any such contract shall be made, the said justices shall cause notices to be given in some public paper circulated in such county, city, riding, hundred, division, town corporate or liberty, of their intention to contract.

A.

A. Order of Two Justices to repair a County Bridge, under Stat. 52 G. 3. c. 110. § 1. *ante*, p. 486.

County of ——— to wit. } *TO ——— of the parish of ——— in the said county. We ——— and ———, two of his majesty's justices of the peace in and for the said county, duly appointed in pursuance of the statute in that case made and provided, to superintend the county bridges, ramparts, banks, cops, and other works appertaining to the same, and the roads over the same, and so much of the roads at the ends thereof as by law is to be repaired at the expence of the said county, within the division or hundred of ——— in the said county, having on this day inspected the county bridge ——— situate in the parish of ——— in the said county, and within the said division or hundred; and it appearing to us, on our own inspection thereof, to be necessary for the purpose of preventing the further decay and injury of the same, to order the immediate repairs and amendments to be done to the same, as in the schedule of particulars by you prepared and signed, and hereto annexed: Now, therefore, we, the said justices, do hereby order and direct you, immediately, to repair and amend the said county bridge, according to the said schedule of particulars by you prepared and signed, and hereto annexed, provided that the sum to be expended in such repairs shall not exceed the sum of ———. Given under our hands this ——— day of ——— 18——.*

B.

B. Certificate to be returned to the Sessions, pursuant to stat. 52 G. 3. c. 110. § 2. *ante*, p. 488.

County of ——— to wit. } *TO the justices of the peace at the general quarter sessions, to be holden at ———, in the said county, the ——— day of ——— 18—. We ——— and ———, two of his majesty's justices of the peace in and for the said county, duly appointed in pursuance of the statute in that case made and provided, to superintend the county bridges, ramparts, banks, cops, and other works appertaining to the same, and the roads over the same, and so much of the roads at the ends thereof as by law is to be repaired at the expence of the said county, within the division or hundred of ——— in the said county, do hereby certify to the said court of quarter sessions, that on the ——— day of ——— last, we did inspect the county bridge ——— situate in the parish of ——— in the said county, and within the division aforesaid; and it having appeared to us, on our own inspection thereof, that ——— and that it was necessary for the purpose of preventing the further decay and injury of the same, to order the immediate repairs and amendments to be done to the same, as follows,* viz. ———————; *therefore we, the said justices, did, on the said ——— day of ———, make our order, in writing, signed with our respective hands, and did thereby order and direct ——— of the parish of ——— in the said county of ——— immediately to make the said repairs and amendments, provided that the sum to be expended in such repairs should not exceed the sum of ——— pounds. And we, the said justices, do hereby further certify, that the said repairs, so directed to be made as aforesaid, have been made accordingly, by the said ———, and that the reasonable price and charges payable*

to the said ——— for the same, amounts to the sum of ——— as per account hereto annexed, and verified on the oath of ———. Given under our hands this ——— day of ———, in the year of our Lord 18—.

Indictment of a Bridge out of Repair.

County of ——— } BY *the oath of ——— good and lawful men of the county of ——— aforesaid, then and there sworn and charged to enquire for our lord the king, and the body of the county aforesaid, it is presented, that a certain common bridge over the river ———, commonly called ——— bridge, lying and being in the parish of ——— in the county aforesaid, in the king's common highway there, leading from the market town of ——— to the market town of ——— in the said county, altogether and from the time whereof the memory of man is not to the contrary, being a common king's highway for all the lieges and subjects of our said lord the king and of his ancestors, with their horses, carts, and carriages to go, pass, ride, and travel at their pleasure, on the ——— day of ——— in the ——— year of the reign of ——— was, and yet is in great decay, broken, and ruinous; so that the lieges and subjects of our said lord the king, upon and over the said bridge with their horses, carts, and carriages, could not and cannot go, pass, ride, and travel, without great danger, to the grievous damage and nuisance of all the lieges and subjects of our said lord the king, upon and over the same bridge going, passing, riding, and travelling, and against the peace of our said lord the king, his crown and dignity. And that the inhabitants of the county aforesaid the common bridge aforesaid (so as aforesaid being in decay) ought to repair and amend when and so often as it shall be necessary.*

[Or, *and that* A. O. *late of ——— in the said county, gentleman, by reason of his tenure of certain lands lying in the parish of ——— aforesaid, ought to make, repair, and amend the said common bridge, as often as and when it shall be necessary.*]

Buggery.

[25 H. 8. c. 6. — 22 G. 2. c. 33. § 19.]

BUGGERY (from the Italian *bugarone*, a buggerer, this vice being said to have been brought into *England* out of *Italy* by the *Lombards*) is a detestable and abominable sin, amongst christians not to be named, committed by carnal knowledge, against the ordinance of the Creator, and order of nature, by mankind with mankind, or with brute beast, or by womankind with brute beast. 3 *Inst.* 58. **What it is.**

And by stat. of 25 *H.* 8. *c.* 6. Buggery committed with mankind or beast is made felony without benefit of clergy. And the **25 H. 8. c. 6. The punishment.**

justices of the peace may hear and determine the same, as in cases of other felonies.

Principal and accessary.

Which said statute making it felony generally, there may be accessaries both *before* and *after*. But those that are *present*, aiding and abetting, are all principals. And although none of the principals are admitted to their clergy, yet accessaries *before* and *after* are not excluded from clergy. 1 *Hale*, 670.

Infants.

If the party buggered be within the age of discretion (which is generally reckoned the age of 14), it is no felony in him, but in the agent only. But if buggery be committed upon a man of the age of discretion, it is felony in them both. 3 *Inst.* 59. 1 *Hale*, 670.

22 G. 2. c. 33. Mariners.

By the articles of the navy (22 *G.* 2. *c.* 33. § 19.), if any person in the fleet shall commit the unnatural and detestable sin of buggery or sodomy with man or beast; he shall be punished with death by the sentence of a court martial.

The indictment has the words *contra naturæ ordinem rem habuit veneream, et carnaliter cognovit:* but Mr. J. *Foster* says, this was never thought sufficient without also charging *peccatumq. illud sodomiticum, anglicé dictum* buggery, *adtunc et ibidem nequiter felonicè, &c. commisit, et perpetravit;* and he refers to *Co. Ent.* 351. *b.* as a precedent settled by great advice. 1 *East's P. C.* 480.

It may be proper to suggest to magistrates, before whom persons are brought on charges of this kind, that they should not bind over the parties accused to answer the *capital part* of this charge, unless it appears that the crime was complete, that is, that there was emission as well as penetration. It is not a felony unless there be an emission, but merely a misdemeanor; and in that case the parties should only be committed or bound over to answer to the misdemeanor.

Evidence.

The nature of evidence with respect to the actual commission of this offence, being the same as in case of "Rape;" it is sufficient to refer to that head. And in proportion as the crime is most detestable, so ought the proof of guilt to be the clearest and most undoubted. 1 *East's P. C.* 480. 4 *Blac. C.* 215.

In a prosecution for this crime, an admission by the prisoner that he had committed such an offence at another time and with another person, and that his natural inclination was towards such practices, ought not to be received in evidence. *Rex* v. *Cole*, *Buckingham Sum. Ass.* 1810, and by all the Judges, *M. T.* following. *MS. C. C. R. Phill. on Evid.* 143.

Commitment for Bestiality with a Cow, (upon stat. 25 *H.* 8. *c.* 6. *ante*, p. 491.)

County of ——— to wit. } *J. P.*, esquire, one of his majesty's justices of the peace for the said county of ——— to the constable of the parish of ——— in the said county, and to the keeper of the common gaol at ——— in the said county.

THESE are in his majesty's name to charge and command you the said constable of ———, in his majesty's name, forthwith to convey and deliver into the custody of the said keeper of the said gaol, the body of A. B., *this day brought before me* J. P. *esquire,*

one of his majesty's justices of the peace in and for the said county, by O. P. *constable of* ———, *and charged on the oath of* I. K. *with having on the* ——— *day of* ——— *last past, at* ——— *in the parish of* ——— *in the said county, in a certain cow-house, with a certain cow then and there being, feloniously had a certain venereal and carnal intercourse, and with having then and there carnally known the said cow, and with having then and there committed the abominable crime of buggery with the said cow, against the order of nature, and against the form of the statute in that case made and provided: And you the said keeper of* ——— *are hereby required to receive him the said* A. B. *into your custody in the said gaol, and him there safely to keep until he be delivered from your custody by due course of law. Given under my hand and seal the* ——— *day of* ——— *A. D.* 182—.

J. P. *(L. S.)*

Burglary.

Offences against the House of another, which fall short of Burglary, belong to tit. **Larceny**, and are to be found under the head **Larceny from the House**, Vol. III. and see tit. **House**, Vol. II.

§ I. *What is Burglary.*
[12 Ann. c. 7.]

II. *Verdict.*

III. *Punishment.*
[18 Eliz. c. 7.—3 W. 3. c. 9.—5 Ann. c. 31.—10 G. 3. c. 48.—5 G. 4. c. 83.]

IV. *Indemnity and Reward for convicting a Burglar.*
[24 H. 8. c. 36.—58 G. 3. c. 70.]

I. What is a Burglary.

Derivation of burglary.

THE word *burglar* seemeth to have been brought unto us out of *Germany* by the *Saxons*, and to be derived of the German *burg*, a house, and *larron* a thief, probably from the Latin, *latro, latronis*.

Definition of burglary.

Burglary *is a felony at common law, in breaking and entering the mansion house of another, in the night, with intent to commit some felony within the same, whether the felonious intent be executed or not.* *Hale's Sum.* 79.

Must be a *breaking*.

Breaking.] To amount to a breaking within this branch of the definition, the entrance must be obtained either by fraud, conspiracy, threat, or force.

But every entrance into the house by a trespasser is not a breaking in this case; there must be an actual breaking. As if

the door of a mansion house stand opên, and the thief enter, this is not breaking. So, if the window of the house be open, and a thief with a hook or other engine draweth out some of the goods of the owner, this is no burglary, because there is no actual breaking of the house. But if the thief breaketh the glass of a window, and with a hook or other engine draweth out some of the goods of the owner, this is burglary, for there was an actual breaking of the house. 3 *Inst.* 64.

And Lord *Hale* says, these acts amount to an actual breaking; *viz.* opening the casement or breaking the glass window, picking open the lock of a door, or putting back the lock, or the leaf of a window, or unlatching the door that is only latched. 1 *Hale*, 552.

Where a glass window was broken, and the window opened with the hand, but the shutters in the inside were not broken; this was ruled to be burglary by *Ward* C. B., *Powis* and *Tracy* justices, and the Recorder; but they thought this the extremity of the law; and on a subsequent conference, *Holt* C. J. and *Powel* J. doubting and inclining to another opinion, no judgment was given. 2 *East's P. C.* 487. See *R.* v. *Bailey* and *Spencer*, *post*, p. 499.

The prisoner broke the glass of prosecutor's side door with intent to enter at a future time on the Friday night, and actually entered on the Sunday night. The judges held this burglary, the breaking being with intent afterwards to enter.

Rex v. *John Smith*, *MS. C. C. R.* The prisoner was tried before *Park* J. at the O. B. *April* sess. 1820, for burglariously breaking and entering the dwelling-house of *Alfred Taylor*, with intent to steal (no stealing was alleged, nor was there any in fact); but the learned judge left the fact of the intent fully to the jury, who, upon the evidence, found that the burglary was with the intent to steal, and, therefore, returned a verdict of guilty. It appeared that in the night between *Friday* the 24th and *Saturday* the 25th *March*, the side door of the prosecutor's house, opening into a thoroughfare passage, had all the glass of it (9 by 10 inches) taken out by the prisoner, with intent to enter, and which the prosecutor never repaired on the *Saturday*. The whole of *Saturday* and *Sunday* elapsed; and nothing more is heard of it. In the night between *Sunday* the 26th and *Monday* the 27th *March*, the prisoner entered at the same hole, but was taken on the premises, before any larceny was actually committed. The jury also found the breaking and entering both, to have been *noctanter*, and that the breaking was not accidental (for the window part of the door was just high enough for a drunken man's head to have hit it), but that both breaking and entering were felonious. But a doubt arose whether one single act of felony (such as a burglary) could be made up by what takes place at two different days, at a distance from each other, and not merely separated by the natural accidents of the transaction itself, as if the felon began his operation at 10 or 11 one night, and did not complete his entry till one or two o'clock in the morning, which would in law be the next day. Ld. *Hale* (1 *P. C.* 551.) says, "But if they break a hole in the house one night to the intent to enter another night, and commit felony, and accordingly they come at another night, and commit a felony through the hole they so made the night before, this seems to be burglary, for the breaking and entering were both *noctanter*, though not the same night; and it shall be supposed, that they brake and entered the night when they entered, for the breaking makes not the burglary till the entry." See also 2 *East*, *P. C.* 491.—This point was submitted for the opinion of the

learned judges, who (in *E. T.* 1820) held this to be burglary, the breaking having been with intent afterwards to enter.

Entering by a chimney.

So, if a thief enter by the chimney it is a breaking; for that is as much closed as the nature of things will permit. 1 *Haw. c.* 38. § 4. 4 *Black. Com.* 226.

Getting into a chimney of a house is a sufficient breaking and entering to constitute burglary, though the party does not enter any of the rooms of the house.

Rex v. *Brice, E. T.* 1821. *MS. C. C. R.* The prisoner got in at the top of a chimney, and got down to just above the mantle-piece of a room on the ground floor. Case on question, whether this was a breaking and entering of the dwelling-house. *Holroyd* and *Burrough* Js. thought not, on the ground that he was not in the dwelling-house till he was beyond the chimney. The ten other judges held otherwise: for the chimney was part of the dwelling-house, the getting in at the top was a breaking of the dwelling-house, and the lowering himself an entry into the dwelling-house.

Getting entrance by fraud.

Thieves, having an intent to rob, raised the hue and cry, and brought the constable, to whom the owner opened the door; and when they came in they bound the constable and robbed the owner; held to be burglary. So if admission be gained under pretence of business; or if one take lodgings with a like felonious intent, and afterwards rob the landlord; or get possession of a dwelling-house by false affidavits without any colour of title, and then rifle the house; such entrance being gained by fraud, it will be burglarious. 2 *East's P. C.* 485.

By deluding a boy who had the care of the house.

So in *A. Hawkins's case, O. B.* 1704. 2 *East's P. C.* 485.; she was indicted for burglary; upon evidence it appeared that she was acquainted with the house, and knew that the family were in the country; and meeting with the boy who kept the key, she prevailed upon him to go with her to the house, by the promise of a pot of ale; the boy accordingly went with her, opened the door, and let her in, whereupon she sent the boy for the pot of ale, robbed the house, and went off; and this being *in the night time*, it was adjudged that the prisoner was clearly guilty of burglary.

Breaking open door of cupboard let into the wall of a house.

At a meeting of the judges upon a special verdict, in *January* 1690, they were divided upon the question, whether breaking open the door of a *cupboard* let into the wall of the house were burglary or no. Concerning which, Mr. J. *Foster* (*Fost.* 108, 109.) thinks, that with regard to cupboards, presses, lockers, and other fixtures of the like kind, in favour of life, a distinction ought to be made between cases relating to mere property, and such wherein life is concerned. He says, " In questions between the heir or devisee, and the executor, (See 2 *Vern.* 508. 1 *P. Wms.* 94.) those fixtures may with propriety enough be considered as annexed to, and parts of the freehold. The law will presume, that it was the intention of the owner, *under whose bounty the executor claimeth*, that they should be so considered; to the end that the house might remain to those who, by operation of law, or by his bequest, should become entitled to it, in the same plight he put it or should leave it, entire and undefaced. But in capital cases, I am of opinion that such fixtures, which merely supply the place of chests and other ordinary utensils of household, should be considered in no other light than as mere moveables, partaking of the

nature of those utensils, and adapted to the same use. And Lord *Hale* in another passage seems to have inclined to the same opinion. 1 *Hale*, 555. 2 *East's P. C.* 489.

Trunk locked.

So, if the thief enter by the open door, and in the house break a trunk or box which was locked, this is no breaking to constitute a burglary; because such things are no part of the house. 2 *East's P. C.* 488.

In the inside.

But a burglary may, notwithstanding, be committed by a breaking on the inside; for though a thief enter a dwelling-house in the night-time through the outer door being left open, or by an open window, yet, if when within the house, he turn the key or unlatch a chamber door, with intent to commit felony, this is burglary. 2 *East's P. C.* 488.

A servant lay in one part of the house and his master in another, between them was a door at the foot of the stairs, which was latched; the servant in the night drew the latch, and entered his master's chamber in order to murder him; this was held to be burglary. 2 *East's P. C.* 488.

So where one of the servants in the house opened his lady's chamber door, (which was fastened with a brass bolt,) with design to commit a rape; it was ruled to be burglary, and the defendant was convicted. *Gray's case*, 1 *Stra.* 481.

By threats.

A breaking may be also in law, as where in consequence of violence commenced or threatened, in order to obtain entrance, the owner either from apprehension of the force or with a view more effectually to repel it opens the door through which the robbers enter.—But where no fraud or conspiracy is made use of, or violence commenced or threatened in order to obtain an entrance, there must be an actual breach of some part of the house, though it need not be accompanied with any violence as to the manner of executing it. 2 *East's P. C.* 486.

Of what part of the house.

Brown's case, *Winton Spring Ass.* 1799. *cor. Buller* J. 2 *East's P. C.* 487. On indictment for burglary in the dwelling-house of *G. A.*, it appeared that the place which the prisoner entered, was a mill under the same roof, and within the same curtilage as the dwelling-house. Through this mill was an open entrance or gateway capable of admitting waggons, and intended for the purpose of loading them more easily with flour, through a large aperture or hatch over the gateway communicating with the floor above. This aperture was closed by folding doors with hinges, which fell over it, and remained closed by their own weight, but without any interior fastening; so that those without under the gateway could push them open at their pleasure by a moderate exertion of strength; in this manner the prisoner entered the mill in the night, with the evident intention to steal the flour. *Buller* J. held this to be a sufficient breaking to constitute the offence, and the prisoner was accordingly convicted. But this doctrine appears to be extremely doubtful from *Callan's case*, *MS. C. C. R.* who was tried before Lord *Ellenborough* C. J. at the *O. B. Nov. Sess.* 1809, on an indictment for stealing three bottles of wine in the dwelling-house of the prosecutor, and afterwards burglariously breaking out of the said house.—The wine was stolen from a bin in the cellar belonging to the dwelling-house of the prosecutor, who kept the *Cock* public house, in *Tottenham Court*, and had been removed by the prisoner from thence to the flap, by which the

Qu. Whether opening a trap door or flap of a cellar fastened by compression only caused by its natural

Callan's case.

weight, be a sufficient breaking to constitute burglary?

cellar was closed on its outside next to the street. The flap had bolts belonging to it by which it might have been bolted within; but whether it was so bolted on the night of the burglary the prosecutor could not say, but he was sure the flap was down. It did not appear whether the prisoner had entered by the flap of the cellar, or not, as a door which communicated with the cellar in another direction, and which the prosecutor had left locked, was broken open. The probability, therefore, was, that the prisoner had entered that way; but if he had entered by raising up the flap, it would (unless prevented) have closed after him *by its own weight*, and, in order to get out after it had so closed, it would have required the degree of force necessary to lift up such a flap, to be applied to it. The flap was a large one, being made to cover the opening of a cellar, through which the liquors consumed in the public house were usually let down into the cellar. The prisoner, when first discovered, had his head and shoulders out of the flap of the cellar, and upon being seized made a spring, got out, and ran away: he was immediately pursued, caught, and brought back, and the flap through which he had got was then found fallen down and closed. Upon this evidence it was doubted, whether there was a sufficient breaking to constitute the crime of burglary, and the prisoner having been convicted, the question was saved for the opinion of the twelve judges, who it is understood entertained great doubts upon the question. — No opinion was ever delivered, but the prisoner was discharged out of custody.

Difference between *Brown's* and *Callan's* cases.

The only difference between this and *Brown's* case appears to be, that in *B.*'s case there were no interior fastenings. — In this, there were, but in neither case were any in fact used, but the compression or fastening, such as it was, was produced by the mere operation of natural weight in both cases.

Where a window opens upon hinges, and is fastened by a wedge, so that pushing against it will open it, forcing it open by pushing against it, is sufficient to constitute a breaking.

R. v. *Hall*, *York Sp. Ass.* 1818, reserved per *Bayley* J. *MS. C. C. R.* *S. H.* was convicted at *York Spring Ass.* 1818, of burglary. It appeared that the prisoner entered the prosecutor's house by lifting up a large iron grating, which was placed over the cellar (for the admission of light only) and opening a window in a passage leading from that cellar. The cellar opened into a passage, which led into the house, and the window was within the walls of the house; the cellar was beyond the walls. The grating weighed eight stone, and was usually fastened inside by a large iron chain, but it was not so fastened at the time the prisoner entered. The window opened upon hinges, and was fastened by two nails which acted as wedges, but those nails would open by pushing. It was objected by the prisoner's counsel, that the *lifting up the grate was no breaking*, because it was kept down by its own weight only; and that the forcing open the window was no breaking, because it was done by pushing only. — Mr. J. *Bayley* thought *the forcing the window* was a breaking, but reserved both points for the consideration of the Judges, who held the conviction right, and the prisoner received sentence of death, but was afterwards reprieved and transported for fourteen years.

Rex v. *Harrison*, *E. T.* 1821. *MS. C. C. R.* The prisoner entered

R. v. Harrison.

a house by pushing down the upper sash of a window; it had no fastening, and was kept in its place by the pulley weight only: there was an outer shutter, but it was not put to. Case on question, whether the pushing down the sash was a breaking, and the twelve judges were unanimous that it was; and *Abbott* C. J. observed without animal force the sash would keep its place.

Pulling down the sash of a window is a breaking, though it has no fastening, and is only kept in its place by the pulley weight.

And it makes no difference though there is an outer shutter, which is not put up.

Breaking open an external gate not opening into any building, no burglary.

Rex v. *Bennett and Turnwell, O. B. Dec.* 1814. *cor.* Sir *J. Silvester*, Recorder. *W. B.* and *J. T.* were convicted at the *O. B. Dec. Sess.* 1814, of burglariously breaking and entering the dwelling-house of *W. A. Frampton* in the night of the 15th of *November*, with intent to steal his goods and chattels, in the said dwelling-house. It appeared in evidence, that the place broken was an external gate not opening into any building, but only into the yard, through which access might be had without interruption to the dwelling part of the prosecutor's premises. But upon reference to the judges on case reserved, they unanimously held this not to be burglary, the place broken being the outward fence of the curtilage only.

Opening an area gate with a skeleton key, and thereby effecting an entrance into the house, adjudged not burglary.

So also in the case of *John Davis* and *James Lemon*, who were convicted of burglary at the *O. B. Jan. Sess.* 1817, before *Abbott* J. A question arose, whether the opening an area gate by means of a skeleton key, and thereby effecting an entrance through the kitchen door, which was open, would constitute the crime of burglary. At *Feb. Sess.* 1817, *Graham* B. stated, that nine judges assembled to consider this case, were unanimously of opinion that the area gate not being part of the dwelling-house, there was not a sufficient breaking to constitute the crime of burglary.

12 Ann. c. 7. Breaking out of house.

By stat. 12 *Ann. c.* 7. stating the law to have been doubtful, it is declared and enacted, "that if any person shall enter into the mansion or dwelling-house of another by day or night, without breaking the same, with an intent to commit felony; or being in such house shall commit any felony; and shall in the night-time break the said house to get out of the same, such person is and shall be adjudged to be guilty of burglary, and shall be ousted of the benefit of clergy, in the same manner as if such person had broken and entered the said house in the night-time, with an intent to commit felony there."

Cornwall's case. By conspiracy.

Joshua Cornwall was indicted with another person for burglary; and it appeared that he was a servant in the house, and in the night-time opened the street door and let in the other prisoner, and shewed him the sideboard, from whence the other prisoner took the plate: after which *Cornwall* opened the door and let him out, but did not go out with him. Upon the trial it was doubted whether this were burglary in the servant, he not *going out* with the other. But afterwards at a meeting of all the judges at *Serjeant's Inn*, they were unanimously of opinion that it was burglary in both, and not to be distinguished from the case where one watches at the street end whilst another goes in and commits the burglary, which hath often been ruled to be burglary in both; and accordingly *Cornwall* was executed. 2 *Stra.* 881. 19 *Howell's St. Tri.* 782. (n.) 4 *Blac. Com.* 227.

And entering.] It is deemed an entry, when the thief breaketh the house, and his body, or any part thereof, as his foot, or his arm, is within any part of the house; or when he putteth a gun into a window which he hath broken, (though the hand be not in) or into a hole of the house which he hath made, with intent to murder or kill; this is an entry and breaking of the house: but if he doth barely break the house, without any such entry at all, this is no burglary. 3 *Inst.* 64. 2 *East's P. C.* 490.

And *entry.*

Rex v. *Burr* and *Loosely, O. B. Feb. Sess.* 1821, *MS.* The prisoners were convicted before *Best* J. on an indictment charging them with burglariously breaking and entering the dwelling-house of the prosecutor, with intent to steal, and stealing a *flitch of bacon.* The prisoner, *Loosely*, lodged in the prosecutor's house; the window shutter was in the night-time opened from the inside of the house, the casement of the window was taken out, and the bacon was most probably put through the window to *Burr*, by whom it was carried away from the prosecutor's premises to *Burr*'s house. It did not appear that *Loosely* went out of the house, or that *Burr* ever entered the house. His lordship inclined, at the trial, to think that the charge of burglary in the indictment was not supported by the evidence; but told the jury that if they believed the facts, he advised them to convict, and that he would save the point for the twelve judges. Afterwards, on conferring with the judges of the Court of K. B., he thought that there was no evidence of *entering* the house; and he, therefore, did not present the case to the twelve judges, but recommended a pardon, on condition of transportation for seven years, as the prisoners were properly convicted of a larceny.

Breaking alone without *entering*, not sufficient.

Where the house was broken, but not entered, and the owner for fear threw out his money, it was holden to be no burglary; though clearly robbery, if taken in the presence of the owner. 2 *East's P. C.* 490.

In the case of *George Gibbons, O. B. June*, 1752. *Fost.* 107. 2 *East's P. C.* 490., who was indicted for burglary in the dwelling-house of *John Allan*, it appeared in evidence that the prisoner in the night-time cut a hole in the window shutters of the prosecutor's shop, which was part of his dwelling-house, and putting his hand through the hole took out watches and other things, which hung in the shop within his reach; but no entry was proved, otherwise than by putting his hand through the hole. This was held to be burglary, and the prisoner was convicted.

William Bailey and *Robert Spencer* were tried at the *O. B. Jan. Sess.* 1818, before *Park* J. for burglariously breaking and *entering* the dwelling-house of *Zachariah Boote*, esq. with intent to steal. The case was very clearly and satisfactorily proved, and the jury found the prisoners guilty; but a doubt arose whether the following facts were sufficient to establish such an *entering* as is requisite to constitute the crime of burglary, there being no question as to the breaking, or intent to steal. The window of the kitchen was proved to be fastened in the following manner: The sash was drawn down, closed and fastened at the point of division by a latch in the inside. The inside shutters were closed and fastened by a bar. The pane in the upper part of the window was broken, in order to put in the hand to

Rex v. Bailey and Spencer.

remove the latch: then the lower sash was thrown up to enable the prisoners to introduce a centre bit to cut a hole in the shutters; and while they were engaged in this last operation, and before they had completed it, they were seized. The jury expressly found that the window was latched; and that the hand of one of the prisoners, both being present, was introduced in order to remove the latch, but the shutter never was actually opened. It was submitted to the judges, whether this introduction of the hand for the above purpose, was such an entering as will constitute burglary, with the other necessary proof? At the *O. B. May Sess.* 1818, *Bayley* J. informed the prisoners, that the judges had considered their case, and were unanimously of opinion that there had been a sufficient entry of the house to constitute the offence of burglary. The hand of one of the prisoners, it appeared, had been introduced beyond the glass window so as to reach the inward shutter, and the intervening space clearly was within the dwelling-house. Conviction right. *Rex* v. *Bailey and Spencer*, *MS. C. C. R.*

Thieves came by night to rob a house; the owner went out and struck one of them; another made a pass with a sword at persons he saw in the entry, and in so doing his hand was over the threshold; this was adjudged burglary by great advice. 2 *East's P. C.* 490.

So putting a hook to steal, or a pistol to kill, within the door or window, though the hand be not in, is an entry. *Ib.*

To discharge a loaded gun into a house is a sufficient entry (*a*). 1 *Haw. c.* 38. § 7.

But where thieves bored a hole through the door with a centre-bit, and part of the chips were found in the inside of the house, by which it was apparent that the end of the centre-bit had penetrated into the house, yet as the instrument had not been introduced for the purpose of taking the property or committing any other felony, it was decided that this entry was not sufficient to constitute burglary. *Rex* v. *Hughes*, 2 *East's P. C.* 491.

If divers come in the night to do a burglary, and one of them break and enter, the rest of them standing to watch, at a distance, this is burglary in all. 3 *Inst.* 64.

And the entry need not be at the same time as the breaking, provided both be in the night; therefore, if thieves break a hole in the house one night, with intent to enter another night and commit felony, which they execute accordingly, it is burglary. 1 *Hale*, 551.

What shall be deemed a mansion-house, or parcel thereof.

The mansion-house.] A burglary may be committed by breaking and entering churches, and the walls and gates of a walled town. 1 *Haw. c.* 38. § 10.

The mansion-house not only includes the dwelling-house, but also the outhouses, as barn, stable, cow-house, dairy-house, *if they be parcel of the messuage*, though they are not under the same roof, or joining contiguous to it. 1 *Hale*, 558, 9.

No burglary can be committed by breaking into any inclosed

(*a*) It appears to have been ruled by Lord *Ellenborough* C. J. that a person discharging a gun from the outside of a field, into it, so as that the shot must have struck the soil, was guilty of breaking and entering the field. Vide *Pickering* v. *Rudd*, 4 *Campb.* 220. 1 *Stark. Rep.* 58. *S. C.*

ground, or into any booth or tent, though the owner lodge therein. 1 *Haw. c.* 38. § 17.

Outhouse.

Where the jury found specially that the prisoner broke and entered in the night time, with intent to steal, an outhouse in the possession of *G. S.* and occupied by him with his dwelling-house mentioned in the indictment, and separated therefrom by an open passage eight feet wide, and that the said outhouse was not connected with the said dwelling-house by any fence enclosing both; the judges were of opinion, that there should be judgment for the prisoner; for the jury should have found it parcel of the dwelling-house, if it were so. The outhouse being so separated from the dwelling-house, and not within the same curtilage or common fence, was not therefore protected by the bare fact of its being so occupied with it at the same time. *Garland's case, Somerset Lent Ass.* 1776. 2 *East's P. C.* 493.

But the outhouses, if adjoining to the dwelling-house, and occupied as parcel thereof, though there be no common inclosure or curtilage, may still be considered as parts of the mansion. *G. Brown's case,* 2 *East's P. C.* 493.

Breaking open a goosehouse, which formed part of the boundary of an inclosed stable-yard, held burglary.

Richard Clayburn and *William Dunning* were convicted before *Bayley* J. at *York Lent Assizes*, 1818, of burglary. The place into which they broke was a *goosehouse*, in the prosecutor's yard, and opposite his house. The yard has a barn all along the north side, a wall seven and a half feet high on the south, a stable, goosehouse, and a weaver's shop, on the east, and the house with a seven and a half foot wall on the west. In the south wall, is a gate leading into an adjoining lane, and the stable and weaver's shop have doors opening backward, as well as doors opening into the yard. The learned judge doubted whether this goosehouse could, under these circumstances, be deemed parcel of the dwelling-house. On case the judges held the conviction right, and the prisoners were transported for fourteen years. *Rex* v. *Clayburn* and *Dunning*, *MS. C. C. R.*

Workshops parcel of dwelling-house.

William Chalkling and *George Lewis* were tried before *Abbott* J. at *Salisbury Lent Assizes*, 1817, for a burglary, and stealing a large quantity of cloth in the dwelling-house of *John Beams*. The prosecutor was a clothier at *Chippenham*; his dwelling-house was situate at the corner of two streets; a range of workshops adjoining the house at one end, and, standing in a line with that end of the house, faced one of the streets. The roof of this range was higher than the roof of the house. At the end of this range, (and adjoining to it,) was another workshop projecting further into the street, and adjoining to that a stable and coach-house used with the dwelling-house. There was no internal communication between the workshops and the dwelling-house, nor were they surrounded by any external fence. A court yard and garden belonging to the dwelling-house lay behind the house and the workshops. There were two entrances into this range of workshops, one by a door opening into the street, and another by an opposite door, opening into the court yard. The street door of this range was opened by a pick-lock key, and the goods were stolen from one of the workshops. The jury found the prisoners guilty; but a doubt arising whether the place broken and from which the goods were stolen ought to be considered as parcel of

the dwelling-house, the point was referred to the judges, who held the conviction right. *Rex* v. *Chalkling* and *Lewis*. *MS. C. C. R.*

Buildings under one roof with the dwelling-house.

A manufactory, however, carried on in the centre building of a great pile, in the wings of which several persons dwelt, but having no internal communication with the same, though the roofs of all were connected, and the entrances of all were out of the same common inclosure, was held not to be a dwelling-house within which burglary could be committed. *Egginton's case*, 2 *East's P. C.* 494. 2 *Bos. & Pull.* 508.

Chambers. Lodgings.

A chamber in one of the inns of court, wherein a person usually lodges, or a lodging in part of a house, divided from the rest, and having a door of its own to the street, is properly called a mansion-house. 1 *Haw. c.* 38. § 11. See 2 *East's P. C.* 499, 500. 505. *Kel.* 84. *post*, p. 505, 506.

But it is not necessary, to make it burglary, that any person be actually in the house at the very time of the offence committed. 1 *Haw. c.* 38. § 11.

Inhabitancy. House left by the family for a time *animo revertendi*.

Nutbrown's case, *O. B. Jan.* 1750. *Fost.* 76. 2 *East's P. C.* 496. *J.* and *M. Nutbrown* were indicted for burglary in the dwelling-house of one Mr. *Fakney* at *Hackney*, and stealing divers goods. The prosecutor made use of it as a country-house in the summer, his chief residence being in *London*. About the latter end of the summer preceding the offence, he removed with his whole family to his house in the city, and brought away a considerable part of his goods; and in *November* last his house at *Hackney* was broken open, and in part rifled; upon which he removed the remainder of his household furniture, except a clock, and a few old bedsteads, and some lumber of very little value; leaving no bed or kitchen furniture, or any thing else for the accommodation of a family. Mr. *F.* being asked, whether at the time he so disfurnished his house, he had any intention of returning to reside there, declared that he had not come to any settled resolution whether to return or not; but was rather inclined totally to quit the house, and to let it for the remainder of his term. The fact the prisoners were charged with was sufficiently proved, and was committed about midnight the first of *January* last. The court were of opinion that the prosecutor having left his house, and disfurnished it in the manner before mentioned, without any settled resolution of returning, but rather inclining to the contrary, it could not, under these circumstances, be deemed his dwelling-house at the time the fact was committed: and accordingly directed the jury to acquit the prisoners of the burglary, which they did, but found them guilty of the stealing. And they were ordered for transportation.—And the distinction is this: where the owner quitteth the house *animo revertendi*, it may still be considered as his mansion-house, though no person be left in it; but there must be an intention of returning, otherwise it will be no burglary. *Fost.* 76, 77.

Therefore, where *John Nicholls*, being possessed of a house in *Westminster*, wherein he dwelt, took a journey into *Cornwall* with intent to return, and sent his wife and family out of town, and left the key with a friend to look after the house; after he had been gone a month, no person being in the house, it was broken open in the night and robbed of divers goods. He returned a month after with his family, and inhabited there. This

was adjudged burglary. *Murray and Harris's case, O. B.* 10 *W.* 3. 2 *East's P. C.* 497.

But though a man leaves his house, and never means to live in it again, yet if he uses part of it as a shop, and lets a servant and his family live and sleep in another part of it for fear the place should be robbed, and lets the rest to lodgers, the habitation by his servant and family is a habitation by him, and the shop shall still be considered part of his dwelling-house. *MS. E. T.* 1821.

R. v. *Gibbons, E. T.* 1821. *MS. C. C. R.* Indictment for burglary in the dwelling-house of *Bendall.* The place broken into was a shop, parcel of a dwelling-house he had inhabited; he left the dwelling-house, and never meant to live in it again, but retained the shop, and let the other rooms to lodgers: after some time he put a servant and his family into two of the rooms, lest the place should be robbed, and they lived there: the judges, on case reserved, thought putting in a servant and family to live very different from putting them in merely to sleep, and that this was still to be deemed *Bendall*'s house, and held the conviction right.

Unoccupied house not slept in by incoming tenant.

Hallard's case, 2 *East's P. C.* 498. The former tenant of a house had quitted it, and the incoming tenant had put in all his furniture, and had been frequently there in the day-time, but had never slept in the house, nor had any of his family. *Buller* J. ruled that burglary could not be committed therein. In a similar case also it was so ruled by *Grose* J.

New unfinished house.

So in *Fuller*'s case, 2 *East's P. C.* 498. 1 *Leach.* 196. (*n*) who was indicted for a burglary in the dwelling-house of Mr. *Holland*, it appeared that the house was a new one, and finished except the painting and glazing; that a workman who was constantly employed by Mr. *H.* slept in it for the purpose of protection, but no part of Mr. *H.*'s domestic family had yet taken possession of it: this was ruled by the recorder not to be the mansion-house of the prosecutor.

Of the owne In whose ma sion.

It is necessary to ascertain to whom the *mansion* belongs, and to state that with accuracy in the indictment. If the rule, observes Mr. *East*, (2 *East's P. C.* 499. 500.) by which to ascertain this ownership may be compressed with sufficient discrimination into a small compass, I should say generally, that where the legal title to the whole mansion remains in the same person; there, if he inhabit it either by himself, his family, or servants, or even by his guests, the indictment must lay the offence to be committted against *his* mansion. And so it is, if he let out apartments to inmates who have a separate interest therein, if they have the same outer door or entrance into the mansion in common with himself. But if distinct families be in the exclusive occupation of the house, and have their ordinary residence or domicile there, without any interference on the part of the proper owner; or if they be only in possession of parts of the house as inmates to the owner, and have a distinct and separate entrance; then the offence of breaking, &c. their separate apartments must be laid to be done against the mansion-house of such occupiers respectively.

General rule

House of a corporation.

A. Hawkins was indicted for burglary in the mansion-house of *S. Story.* It appeared that it was the house of the *African* Company, and that *Story* was only an officer of the company, having apartments and inhabiting the house; it was ruled by *Holt* C. J.,

Hawkins's case. *Tracy* J., and *Bury* B., that *Story*'s apartments could not be said to be his mansion-house, he only occupying them as an officer of the company; for though an aggregate corporate body could not be said to inhabit any where, yet they might have a mansion-house for the habitation of their servants; and the jury were discharged of this indictment; and it was afterwards laid as the mansion-house of the company. *O. B.* 1704. *Fost.* 38. 2 *East's P. C.* 501.

So *J. Picket* was indicted for burglary in the dwelling-house of the *East India* Company, which is inhabited by their servants; and he was convicted and executed. *O. B. April*, 1765. 2 *East's P. C.* 501.

C. Maynard was indicted (*Cambridge Spring Assizes* 1774) for burglary in the mansion-house of the master, fellows, and scholars of *Bennet* college, in *Cambridge*. It appeared that he broke into the buttery of the college, and there stole some money; and it was agreed by all the judges, upon a reference to them, that it was burglary. *C. Maynard's case.* 2 *East's P. C.* 501.

Servant's house. *G. Brown* was indicted for burglary in the dwelling-house of *M. Graydon,* and stealing thereout oats. A second count stated it to be the dwelling-house of *T. Trumball. Graydon,* a farmer, had a dwelling-house in which he lived, a stable, cow-house, cottage, and barn, all in one range of buildings in the order mentioned, and under one roof; but they were not inclosed by any wall or court yard, nor was there any communication from one to the other within. *Trumball's* family resided in the cottage by agreement with *Graydon,* when he went into his service; but *Trumball* paid no rent; only an abatement was made in his wages on account of his family residing in the cottage. Some corn having been missed out of the barn, *Trumball* and another person put a bed in the barn, and went and slept there, and a few nights after they had so done, the prisoner unlocked the barn door, and took away a quantity of oats. After conviction, judgment was respited upon a doubt whether it could be considered as the dwelling-house either of *Graydon* or *Trumball.* Upon a reference, it was agreed (*Mich. T.* 1787.) by all the judges, that the sleeping in the barn made no difference. But they held (*Buller* J. doubting) that this was no more than a licence to *Trumball* and servant to lodge in the cottage, and not a letting of it to him (*a*); and that the barn, as well as the rest of the buildings, being under the same roof, continued parts of the mansion-house of *Graydon.* (*MS. Gould* J.) And many of the judges inclined to think that if there had been a demise of the cottage to *Trumball,* the barn would still have continued part of *Graydon*'s dwelling-house in point of law. *G. Brown's* case, *Newcastle Sum. Ass.* 1787. 2 *East's P. C.* 501.

So also, where the servant of three partners in trade had weekly wages, and particular rooms assigned to him, as lodging for himself and his family, over the bank and brewery office of his employers, with which his lodging communicated by a trap door and a ladder, it was holden by the judges (*M. T.* 1809.), after argument, that a burglary committed in the banking room

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(*a*) Vide *Bertie* v. *Beaumont,* 16 *East,* 33.

was well laid as in the dwelling-house of the three partners. *R.* v. *Stockton and others*, tried at *Carlisle Sum. Ass.* 1809. Cor. *Chambre* J. 2 *Taunt.* 339. 2 *Leach.* 1015.

Inn.

If the chamber of a guest at an inn be broken open, it must be laid in the indictment to be the mansion-house of the innkeeper. 2 *MS. Sum.* 249.

Wife or family.

As the possession of the servant or guest is the possession of the owner, so is the possession of any one who in law is deemed to be part of the owner's family. In *Farre*'s case (*Kel.* 43.) it was holden that if the house of a feme covert who lives apart from her husband be broken, though the husband had expressly refused to have any thing to do with the lease, and the landlord had thereupon agreed with the wife alone, yet it must be laid to be the house of the husband.

But in any case where the law would adjudge the separate property of the mansion to be in the wife, and she has also the exclusive possession, the burglary ought to be laid against her mansion-house, and not against that of her husband. 2 *East's P. C.* 504.

Partners.

M. Jones was indicted for burglary in the dwelling-house of *T. Smith* and *J. Knowles*. The prosecutors were in partnership, and lived next door to each other. The two houses, which were formerly one, had been divided for the purpose of accommodating their respective families, and were at the time perfectly distinct and separated from each other, without any communication but by the street. The housekeeping was paid by each partner separately for his own house; but the rent and taxes of both houses were paid jointly out of the partnership fund. The offence was committed in the house of *Smith*, to whom the prisoner was servant. It was objected, that though these two houses were the joint property of both the partners, yet they were the several and respective mansions of each; and therefore the offence ought to have been stated to have been committed in the house of *Smith only*: and the court, considering the objection to be well founded, directed the jury to acquit the prisoner of the capital part of the charge; and she was found guilty of the simple larceny only. *M. Jones's* case, *O. B. Sept.* 1790. 2 *East's P. C.* 504. 1 *Leach*, 537.

Inmates of a house.

And where inmates have several rooms in a house of which they keep the keys, and inhabit them severally with their families, yet if they enter at one outer door with the owner, these rooms cannot be said to be the dwelling-houses of the inmates, but the indictment ought to be for breaking the house of the owner.—But if the owner inhabit no part of the house, or even if he occupy a shop or a cellar in it, but do not sleep therein, the apartments of such inmates shall be considered as their respective dwelling-houses. *Carrell's case*, 1 *Leach*, 237. *Trapshaw's case*, 1 *Leach*, 427., and p. 90. *notis.*

Lodgers.

If the owner who lets out apartments in his house to other persons, sleep under the same roof, and have but one outer door common to him and his lodgers, such lodgers are only inmates, and all their apartments are parcel of the one dwelling-house of the owner. *Kel.* 84.

But if the owner do not lodge in the same house, or if he and the lodgers enter by different outer doors, the apartments so let

out are the mansion for the time being of each lodger respectively, even though the rooms are let by the year. 2 *East's P. C.* 505.

Shop.

But if *A*. have a shop which is parcel of his house, the indictment must be for breaking the mansion-house of *A*.; but if it be severed by lease, and have no communication with the dwelling-house by having a different entrance, then, unless the lessee or his servant sleep there usually or often, no burglary can be committed in it. (2 *East's P. C.* 507.) For it is not the mansion-house of *A*., being severed by the lease; nor can it be said to be the mansion-house of the lessee, if neither he nor his family ever dwell there, or if their sleeping there be only casual or temporary.

To break and enter a *shop*, not parcel of the mansion-house in which the shopkeeper never lodges, but only works or trades there in the day-time, is not burglary, but only larceny: but if he or his servants usually or often lodge in the shop at night, it is then a mansion-house, in which burglary may be committed. 1 *Hale*, 557, 558.

A shop adjoining to a house, but let with some of the rooms to a tenant, is still part of the dwelling-house if under the same roof, and within the curtilage, although there be no internal communication, and although no person sleep in the shop.

R. v. *Gibson and others*, *Kingston Lent Ass.* 1785. 2 *East's P. C.* 508. 1 *Leach*, 357. *Gibson* and others were indicted and convicted of a burglary in the dwelling-house of *T. Smith*, and stealing the goods of *J. Hill*. *Smith* was the owner of a house at *Esher*, in which he resided, and to which house there was a shop adjoining built close to the house: but there was no internal communication between the house and the shop, and no person lay in the shop; the only door to the shop was in the court-yard before the house and the shop, which yard was inclosed by a wall three feet high, including both the house and shop. *Smith* let the shop, together with some apartments in the house, to *Hill* from year to year at a rent. There was only one common door to the house, which communicated as well to *Smith*'s as to *Hill*'s apartments. A gate or wicket, fastened by a latch in the wall of the court-yard next the road, served as a communication both to the house and shop. The burglary was committed in the shop. It being objected that this could not be said to be the dwelling-house of *Smith*, the point was referred to the judges, who (*E. T.* 1785) were all of opinion that the indictment had properly described it as the dwelling-house of *Smith*, who inhabited one part, there being but one outer door; especially as it was within one curtilage or fence; and that the shop, being let with a part of the house inhabited by *Hill*, still continued to be part of the dwelling-house of *Smith*, although there was no internal communication between them. But it was admitted that if the shop had been let by itself, *Hill* not dwelling therein, burglary could not have been committed in it; for then it would have been severed from the house.

Of the name of the person who claims property.

It is necessary also to state with accuracy the name of the person whose goods are stolen. Thus, where the indictment was for breaking, &c. the house of *J. Davis*, with intent to steal the goods of *J. Wakelin* in the said house being, and there was no such person who had goods in the house; but *J. W.* was, by mistake, inserted for *J. D.*; the prisoner was acquitted. And it was ruled that the words "*J. W.*" could not be rejected as surplusage, they being sensible and material; that it was necessary to state truly the property in the goods, and that without such words the

description of the offence would be incomplete; and that it is not like the case of alleging a robbery in the dwelling-house of *A.*, which turns out to be the property of *B.*; because that circumstance is perfectly immaterial in robbery, which is ousted of clergy generally. *Jenks's case, O. B. June,* 1796. 2 *East's P. C.* 514. 2 *Leach* 774. *M. T.* 1796.

What shall be deemed night.

In the night.] As to what shall be accounted night for this purpose; anciently the day was accounted to begin only from sun-rising, and to end immediately upon sun-set: but it is now generally agreed, that if there be day-light enough begun or left either by the light of the sun or twilight, whereby the countenance of a person may be reasonably discerned, it is no burglary; but that this does not extend to moon-light; for then many midnight burglaries would go unpunished. (3 *Inst.* 63. 1 *Hale,* 550. 2 *East's P. C.* 509.). And, besides, the malignity of the offence does not so properly arise, as Mr. Justice *Blackstone* observes (4 Com. 224.), from its being done in the dark, as at the dead of night, when all the creation, except beasts of prey, are at rest, when sleep has disarmed the owner, and rendered his castle defenceless.

In the day-time there can be no burglary. 4 *Blac. Com.* 224.

R. v. *Waddington,* 2 *East, P. C.* 513. At *Lancaster* Lent assizes 1771, there was an indictment for burglary, alleging the fact to have been committed in the night, but not expressing about what hour it was done. Mr. J. *Gould* held the indictment insufficient as for a burglary, and directed the prisoner to be found guilty of a simple felony only. He said, that according to the old doctrine, a burglary might be committed at any time between sun-setting and sun-rising; but that the rule now established is, that it cannot be committed during the *crepusculum;* that therefore it is necessary to specify the *hour,* in order that the fact may appear upon the face of the indictment to be done between the twilight of the evening and that of the morning.

There must be an intent to commit felony.

With intent to commit felony.] There can be no burglary but where the indictment both expressly alleges, and the verdict also finds, an intention to commit some felony; for if it appear that the offender meant only to commit a trespass, as to beat the party, or the like, he is not guilty of burglary. 1 *Haw. c.* 38. § 18.

R. v. *Knight & Roffey,* 2 *East's P. C.* 510. The prisoners were indicted for a burglary in the dwelling-house of *Mary Snelling,* the intent being laid to steal the goods of one *Leonard Hawkins.* It appeared that *Hawkins,* who was an excise officer, had seized some bags of tea in a shop, entered in the name of *Smith,* as being there without a legal permit, and had removed them to *Mary Snelling's* where he lodged. The prisoners and many other person broke open *Mary Snelling's* house in the night, with intent to take this tea. It was not proved that *Smith* was in company with them; but the witness said, that they supposed the tea to belong to *Smith;* and supposed that the fact was committed either in company with him, or by his procurement. The jury, being directed to find as a fact with what intent the prisoners broke and entered the house, found that they intended to take the goods on the behalf of *Smith;* and, upon the point being reserved, all the judges (*E. T.* 1782.) were of opinion that the indictment was not supported; as, however outrageous the con-

R. v. Knight and another.

duct of the prisoners was, in so endeavouring to get back *Smith*'s goods, still there was no intention to steal. But if the indictment had been for breaking the house with intent feloniously to rescue goods seized, &c., which is felony by stat. 19 *G.* 2. *c.* 34. some of the judges thought that it would have been burglary. But even in that case, it was agreed that evidence must be given on the part of the prosecutor, to shew that the goods were uncustomed, in order to throw the proof upon the prisoners, that the duty was paid: but being found in oil-cases, or in great quantities in an unentered place, would have been sufficient for that purpose.

Either at common law, or such as is made felony by statute.

For it seems the better opinion, that an intention to commit a rape, or other such crime, which is made felony by statute, and was a trespass only at common law, will make a man guilty of burglary, as much as if such offence were a felony at common law; because wherever a statute makes any offence felony, it incidentally gives it all the properties of felony at common law. 1 *Haw. c.* 38. § 18.

Whether the felonious intent be executed or not.] Thus they are burglars, who break any house or church in the night, although they take nothing away. And herein this offence differs from robbery, which requires that something be taken, though it is not material of what value.

J. Dobbs was indicted for burglary in breaking and entering the stable of *J. Bayley*, part of his dwelling-house, in the night, with a felonious intent to kill and destroy a gelding of one *A. B.* there being. It appeared that the gelding was to have run for 40 guineas, and that the prisoner cut the sinews of his fore-leg to prevent his running, in consequence of which he died. *Parker* C. J. ordered him to be acquitted; for his intention was not to commit the felony by killing and destroying the horse, but a trespass only to prevent his running; and therefore no burglary. But the prisoner was again indicted for killing the horse, and capitally convicted. *Dobb's case Buckingham Sum. Ass.* 1770. 2 *East's P. C.* 513. *Vide* 1 *Hale*, 561.

But whatever be the felony really intended, the same must be laid in the indictment and proved agreeably to the fact.

On an indictment for burglary and stealing goods, it appeared that no goods were stolen, but a burglary with intent to steal; the latter not being so laid, as it ought to have been, *Holt* C. J. directed the prisoner to be acquitted. 2 *East's P. C.* 514.

So, if it be alleged that the entry was with intent to commit one sort of felony, and the fact appear to be that it was with intent to commit another; that is not sufficient. 2 *East's P. C.* 514.

Though if the intended felony were actually committed, it is enough to state the breaking and entering to be with intent to do so. *Ibid.*

Persons acquitted of burglary may be indicted for larceny.

Where a man commits burglary and at the same time steals goods out of the house, it is also larceny; and if he be acquitted of the burglary, he may notwithstanding be indicted of the larceny: for they are several offences, though committed at the same time. And burglary may be, where there is no larceny; and larceny may be, where there is no burglary. 2 *Hale*, 246.

II. Verdict.

The indictment may be so laid as to comprise several offences, arising out of the same transaction, so that the prisoner may be found guilty of part, and acquitted of the rest. As if the prisoner be charged with burglariously breaking and entering the dwelling house, and stealing goods of the value of 40*s.*; he may be acquitted of breaking and entering in the night time, &c., and yet found guilty of stealing in the dwelling house: and upon this record he is ousted of clergy. *Rex* v. *Withal* and *Overend*, 1 *Leach*, 88. and 2 *East's P. C.* 517.; and *R.* v. *Hungerford*, *ib.* 518. See Vol. III. *tit.* Indictment, p. 43. n. (*a*). Or upon such an indictment the prisoner may be acquitted of the capital charges, viz. of the burglary, and of stealing in the dwelling-house to the value of 40*s.* and be convicted of the simple larceny, and so have the benefit of clergy. 1 *Hale*, 561.

III. Punishment.

By stats. 18 *El. c.* 7. and 3 *W. c.* 9. Benefit of clergy is taken away in cases of burglary both from the principal and the accessary *before*: but in all cases of burglary, accessaries *after* must have their clergy. 2 *Hale*, 364. 2 *Haw. c.* 33. § 105. 106.

Accessaries whether clergyable.

By stat. 5 *Ann. c.* 31. § 5. Any person who shall receive, harbour or conceal any burglars, knowing them to be so, shall be taken and received as accessary to the said felony.

Accessaries, who shall be.

R. v. *Gadsby*, *Northampton Lent Assizes*, 1818. *MS. C. C. R.* *Joseph Wilmore* was indicted at *Northampton Lent Assizes*, 1818, before *Garrow* B. for a burglary in the dwelling-house of *Charles Hill*, and burglariously stealing his goods. *Joseph Gadsby*, for feloniously and burglariously receiving the same. Upon the trial the prisoner *Wilmore* was acquitted of the burglary, but found guilty of stealing the goods. And *Gadsby* was found guilty of feloniously *receiving*. *Denman* objected, that *Wilmore* having been acquitted of the *burglary*, *Gadsby* could not be convicted. Upon case reserved, the judges held the conviction right, and the prisoner was transported for fourteen years.

Principal acquitted of the capital charge. Accessary convicted of receiving the goods, and transported for 14 years.

And by stat. 10 *G.* 3. *c.* 48. "Every person who shall buy or receive any stolen jewel or jewels, or any stolen gold or silver plate, watch or watches, knowing the same to have been stolen, shall, in all cases where such jewel or jewels, or gold or silver plate shall have been feloniously stolen, accompanied with a burglary actually committed in the stealing the same, be triable as well before conviction of the principal felon whether he be in or out of custody, as after his conviction. And if such person so buying or receiving such jewel or jewels, or gold or silver plate, shall be convicted thereof, he shall be adjudged guilty of felony, and transported for fourteen years." *Vide ante*, p. 25.

10 G. 3. c. 48. Receivers of jewels, plate, &c.

As a means of preventing burglary and house-breaking, by stat. 5 *G.* 4. *c.* 83. § 4., it is enacted, "that every person having in his or her custody or possession any picklock key, crow, jack, bit, or other implement, with an intent feloniously to break and enter into any dwelling-house, warehouse, coach-house, stable or out-building; or being armed with any gun, pistol, hanger, cutlass, bludgeon, or other offensive weapon; or having upon him or her

5 G. 4. c. 83. Persons having house-breaking implements.

5 G.4. c.83.

any instrument with intent to commit any felonious act; every person being found in or upon any dwelling-house, warehouse, coach-house, stable, or out-house, or in any inclosed yard, garden, or area, for any unlawful purpose, shall be deemed a rogue and vagabond within the true intent and meaning of this act; and it shall be lawful for any justice of the peace to commit such offender being thereof convicted before him by the confession of such offender; or by the evidence on oath of one or more credible witnesses to the house of correction, there to be kept to hard labour for any time not exceeding three calendar months; and every such picklock key, crow, jack, bit, and other implement; and every such gun, pistol, hanger, cutlass, bludgeon, or other offensive weapon; and every such instrument as aforesaid, shall by the conviction of the offender, become forfeited to H. M.

Punishment.

Implements, how disposed of.

In a case upon stat. 23 *G.* 3. *c.* 88. (passed for the like purposes, but repealed by stat. 5 *G.* 4. *c.* 83. § 1.) *R.* v. *Brown*, 8 *T. R.* 26., a warrant of commitment was holden defective, because it did not state that the defendant was apprehended with the implements of house-breaking upon him *at the time of such apprehension.* Ld. *Kenyon* C. J. said that he yielded with great reluctance to the objection.

IV. Reward for convicting a Burglar.

Indemnity for killing him.

It may be observed, that it is provided by stat. 24 *H.* 8. *c.* 36. that there shall be no forfeiture of lands or goods for killing any person that attempts to commit burglary.

But besides this indulgence to a person killing such an offender in defence of his house, there are special advantages and rewards for apprehending him. (See title Costs.) Stat. 58 *G.* 3. *c.* 70.

Warrant to apprehend a Burglar.

County of ——— } To the constable of ———.

FORASMUCH as A. I. *of ———, in the county of ———, yeoman, hath this day made information and complaint upon oath before me* J. P. *esquire, one of his majesty's justices of the peace for the said county, that yesterday in the night the dwelling-house of him the said* A. I. *at ——— aforesaid, in the county aforesaid, was feloniously and burglariously broken open, and one silver tankard of the value of* 5l. *of the goods and chattels of him the said* A. I. *feloniously and burglariously stolen, taken and carried away from thence; and that he hath just cause to suspect and doth suspect that* A. O. *late of ———, in the county of ———, labourer, the said felony and burglary did commit; These are therefore in his said majesty's name to command you, that immediately upon sight hereof you do apprehend the said* A. O. *and bring him before me to answer the premises, and to be further dealt withal according to law. Herein fail you not. Given under my hand and seal the ——— day of ———, in the year ———.*

Indictment for Burglary.

County of ——— } *THE jurors for our lord the king upon their oaths present, that* A. O., *late of the parish of ———,*

in the county of ——, labourer, on the —— day of ——, in the —— year of the reign of ——, about the hour of one in the night of the same day (a), *with force and arms, at the parish aforesaid, in county of ——, the dwelling-house* (*b*) *of* A. I. *there situate, feloniously and burglariously did break and enter, with intent the goods and chattels of the said* A. I. *in the said dwelling-house then and there being, then and there feloniously and burglariously to steal, take, and carry away, and then and there with force and arms one silver tankard of the value of* 5l. *of the goods and chattels of the said* A. I. *in the same dwelling-house then and there being found, then and there feloniously did steal, take, and carry away; against the peace of our said lord the king, his crown and dignity.*

Or, *That* I. S. *on such a day, in the night of the same day, with force and arms, the dwelling-house* (b) *of* A. B. *feloniously and burglariously broke and entered, and then and there such and such things of the goods and chattels of the said* A. B. *in the said house then being, feloniously and burglariously* did steal, take, and *carry away.*

Burial of Dead Human Bodies cast on Shore.

See Bodies (Dead) *Stealing*.

48 G. 3. c. 75.

BY stat. 48 *G.* 3. *c.* 75. after reciting, that whereas no provision hath been made by law for providing suitable interment in church-yards or parochial burying-grounds, for dead human bodies cast on shore from the sea by wreck or otherwise, in *England:* and that it was expedient that provision should be made for the decent interment of such bodies; it is enacted, that the churchwarden and churchwardens, overseer and overseers of the poor for the time being of the respective parishes throughout *England*, in which any dead human body shall be found cast on shore from the sea by wreck or otherwise, shall and he and they is and are hereby required upon notice to him or them given that any such body is cast on shore by the sea, and is lying within the bounds of the parish for which he or they shall be churchwarden or church-

In cases where dead human bodies shall be cast on shore, churchwardens, &c. of the parish where the body shall be found to cause the same to be removed and in-

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(*a*) It should be always stated in the night of the preceding day, though it be after twelve o'clock.

(*b*) It must be laid to be done in a mansion or dwelling-house, and therefore if it be only said to be in the *house* of such an one, it is not sufficient. But this rule extends only to the case of burglary in a private house; for if the offence be committed by breaking open a church, or the gates or walls of a town, it seems more proper to lay the indictment according to the fact; wherefore stating that the prisoner *feloniously and burglariously broke and entered, &c. the parish church of D. &c.* is sufficient. Where the burglary is in any outhouse which by law is considered part of the dwelling-house, it must still be laid to be done in the dwelling-house; or at least in the stable, &c. alleging it to be part of the dwelling-house; and in either case, the jury should find the fact, that it is parcel of the dwelling-house. 2 *East's P. C.* 512. Vide *Dobbs's case, ante*, p. 508.

Mansion.

48 G. 2. c. 75.

terred in a decent manner in the church-yard of such parish.

wardens, overseer or overseers of the poor, to cause the same to be forthwith removed to some convenient place, and with all convenient speed to cause such body or bodies to be decently interred in the church-yard or burial-ground of such parish, so that the expences attending on such burial do not exceed the sum which at that time is allowed in such parish for the burial of any person or persons buried at the expence of such parish: provided that in case any such body shall be cast on shore from the sea in any extra-parochial place where there is no churchwarden or churchwardens, overseer or overseers of the poor, then and in every such case the constable or headborough of such place shall, on notice being given to him that such body is lying in such extra-parochial place, forthwith cause such body to be removed to some convenient place, and with all convenient speed cause the same to be buried in such and the like manner as the churchwardens and overseers within *England* are hereby required to bury such body or bodies.

Minister of the parish to perform the funeral service, &c.

§ 2. Every minister, parish clerk, and sexton of such respective parishes shall perform their several and respective duties in such and the like manner as is customary in other funerals, and shall admit of such body being interred in such church-yards or burial grounds without any improper loss of time, receiving for the same, by way of compensation, such and the like sums as in cases of burials made at the expence of such parishes.

Rewarding persons finding dead human bodies, and giving notice thereof to parish officers.

§ 3. In case any person shall find any such body cast on shore from the sea by wreck or otherwise, and shall within six hours thereafter give notice thereof to some one of the churchwardens or overseers of the parish for the time being in which such body or bodies shall be found, or to the constable or headborough for the time being, in case such body shall be found in any extra-parochial place, or cause such notice to be left at his or their last or usual place or places of abode, then and in every such case such person or persons shall receive the sum of five shillings for his, her, or their trouble, such sum to be forthwith paid to the person or persons first giving such notice only; but nevertheless that no greater sum than five shillings shall be paid for any one notice, although there may be a greater number of such bodies than one.

Persons finding dead human bodies cast on shore, and not giving notice, subject to a penalty.

§ 4. In case any person shall find any such body cast on shore, and shall not within six hours thereafter give notice to some one of the churchwardens or overseers of the parish in which such body shall be found, or to the constable or headborough in any extra-parochial place, or cause such notice to be left at his or their last or usual place or places of abode, such person or persons shall for every such offence forfeit the sum of five pounds.

Expences to be paid by churchwardens, &c.

§ 5. All necessary and proper payments, costs, charges, and expences which shall be made or incurred in or about the execution of this act, shall be made and paid by the churchwarden or churchwardens, overseer or overseers, constable or headborough for the time being of such respective parishes and places.

Who are to be reimbursed by the treasurer of the county.

§ 6. And, for reimbursing him or them all such payments, costs, charges, and expenses, it shall be lawful for any one justice of the peace for the county or place within *England*, in which any such body shall have been so removed and buried as aforesaid, by any

writing under his hand (A) (*a*), to order and direct the treasurer for such county to pay such sum or sums of money to such churchwarden, overseer, constable or headborough, for his or their costs and expenses in or about the execution of this act (after the same shall have been duly verified on oath) as to the said justice shall seem reasonable and necessary; and such treasurer shall and he is hereby required forthwith to pay the sum so ordered to be paid to the person or persons empowered to receive the same; and such treasurer shall be allowed the same in his accounts.

48 G. 3. c. 75.

A.

§ 7. In case any such churchwarden or overseer, constable or headborough, shall refuse or neglect to remove or cause to be removed such body or bodies from the sea shore to some convenient place prior to the interment thereof, for the space of twelve hours after such notice given, or left in writing at his usual place of abode, or shall neglect or refuse to perform the several other duties required of him and them by this act, then and in every such case every such churchwarden or overseer, constable or headborough, shall forfeit the sum of 5*l*.

Penalty on parish officers neglecting to remove and inter dead human bodies so found or cast on shore.

§ 8. All penalties and forfeitures under this act, if not paid on conviction, shall be levied and recovered by distress and sale of the goods and chattels of the offender, by warrant under the hand and seal of any justice for the county or place where the offence shall happen (which warrant such justice is hereby empowered to grant on the confession of the party, or upon the evidence of any credible witness upon oath) and the surplus arising by such distress and sale shall be returned on demand to the owner of such goods and chattels, after deducting the costs and charges of making, keeping, and selling the distress; and such forfeitures, when recovered, shall be paid to the informer; and if sufficient distress shall not be found, or such penalties and forfeitures shall not be paid forthwith, such justice is hereby authorised and required, by warrant under his hand and seal, to cause the offender to be committed to the common gaol or house of correction of such county or place, there to remain without bail or mainprize, for any time not exceeding two calendar months, nor less than fourteen days, unless such penalties and forfeitures, and all reasonable charges attending the recovery thereof, shall be sooner fully paid and satisfied.

Recovery of penalties under this act.

§ 9. And in all cases where any conviction shall be had for any offence committed against this act or against any order of sessions or any matter in pursuance of this act, the form of conviction shall be in the words or to the effect following:

BE it remembered, that on this ——— day of ———, in the ——— year of the reign of ———, A. B. *is convicted before ———, one of his majesty's justices of the peace for the ——— of*

Form of conviction.

(*a*) The prisoner framed an order, purporting to be the order of a magistrate on the treasurer of a county, to reimburse one *Cose* the expences of burying a dead body cast on shore: a majority of the judges held (on case reserved) that this was a forgery, though there was no such magistrate as the individual mentioned in the order, and though the order did not state *Cose* to be a parish officer, or that the expences incurred were reasonable and *necessary*. *Rex* v. *Froud, tried before Holroyd J. at Launceston Spring Ass.* 1819. *and argued in the Exchequer Chamber, June 26th,* 1819. 1 *Brod. & Bing.* 300.

R. v. Froud. Forging justice's order to reimburse expences of burying corpse cast on shore.

48 G.3. c.75.

having [as the offence shall be], *and I the said* ——— *do adjudge him* [or *them*] *to forfeit and pay for the same the sum of* ———. *Given under my hand and seal the day and year aforesaid.*

Appeal to the quarter sessions.

§ 10. If any person shall think himself aggrieved by any judgment or by any matter done in pursuance of this act, such person or persons may appeal to the justices at the first general or quarter sessions of the peace to be holden for the county or place (within which the matter of appeal shall arise,) next after the expiration of one calendar month from the time such matter of appeal shall have arisen, the person appealing having first given ten days' notice at least of his or their intention to bring such appeal, and of the matter thereof, to the person or persons so appealed against, and forthwith after such notice entering into a recognisance before some justice of the peace for such county or place, with sufficient sureties conditioned to try such appeal and abide the order and award of the said court thereon; and the said justices at such sessions, upon due proof of such notice and recognisance having been given and entered into, are hereby authorised and required to hear and determine the matter of such appeal in a summary way, and to make such determination therein, and to award such costs to either of the parties, or otherwise, as they shall judge proper; and the said justices may if they see cause mitigate any fine, penalty, or forfeiture, and may also order such further satisfaction to be made to the party injured as they shall judge reasonable; and all such determinations of the said justices shall be final, binding, and conclusive upon all parties, to all intents and purposes whatsoever.

Proceedings not to be quashed for want of form.

§ 11. Where any distress shall be made for any sum of money to be levied by virtue of this act, the distress itself shall not be deemed unlawful, nor the party making the same be deemed a trespasser on account of any defect or want of form in the information, summons, conviction, warrant of distress, or other proceedings relating thereto; nor shall the party distrained be deemed a trespasser *ab initio*, on account of any irregularity that shall be afterwards done by the party so distraining, but the person aggrieved by such irregularity, shall and may recover full satisfaction for the special damage in an action upon the case.

Penalties to be paid by persons incurring the same, and not by the parish.

§ 12. All penalties and expenses attendant thereon, which shall be incurred under the provisions of this act, shall be paid and borne by the person or persons incurring the same, and the parish or place wherein such person or persons ought to have acted in the duties prescribed by this act shall be wholly exempted therefrom.

Lords of manors &c to pay the same fee as heretofore on interring dead human bodies, &c.

By § 13. after reciting that whereas in cases of dead wrecks, wherein no living person is found, or owner known, the lords of manors on which any such dead body or dead bodies may be washed in, and who are entitled to wreck there, have usually paid a small fee for the placing such body or bodies in the ground in the state in which the same have been found, and such payments have been adduced and admitted as proof on trials at common law of the right of such lords of manors to wrecks in such manors; it is enacted, that in all such cases it shall be lawful for every lord of any manor throughout *England* to pay or cause to be paid to the churchwarden, overseer, constable or headborough of such re-

spective parishes and places as aforesaid, such and the like sums as he or they was or were heretofore accustomed to pay for the placing any such body or bodies into the ground as aforesaid; such sums to go in part payment and discharge of the costs and expenses to be incurred in or about the execution of this act, and credit to be given for the same by such overseers, churchwardens, constable or headborough, in their accounts with the county to which such accounts shall be submitted.

48 G. 3. c. 75.

§ 14. And for defraying the expenses of the removal and burial of such body or bodies as aforesaid, and all other expenses necessary for the execution of this act, it is enacted, that the justices at the general or quarter sessions may cause such sums of money as shall be necessary for all or any of the purposes aforesaid, to be raised in the same manner as rates are directed to be raised by stat. 12 *G.* 2. *c.* 29. *post, tit.* County-rate.

How expense of interment shall be defrayed.

A. Order for Reimbursement on Stat. 48 *G.* 3. *c.* 75. § 6., ante, p. 513.

A.

To the treasurer of the county of ———.

I, J. P. *esquire, one of his majesty's justices of the peace for the county of* ———, *having enquired into and ascertained upon oath, the payments, costs, charges, and expenses, in the account annexed, amounting to the sum of* ———, *incurred by the overseers of the poor of the parish of* Z. *in the said county, by reason of* ——— *a dead human body having been found, cast by the sea on the shore of the aforesaid parish, on the* ——— *day of* ———, *one thousand eight hundred and* ———, *and interred by the said overseers of the poor at the like sums as in cases of burials made at the expense of the said parish, do hereby order you, immediately on sight thereof, to pay unto* A. O., *overseer of the poor of the before-mentioned parish, the said sum of* ——— *according to an act passed in the forty-eighth year of the reign of his late majesty king* George *the third, intituled,* "An act for providing suitable interment in church-yards or parochial burying-grounds in *England,* for such dead human bodies as may be cast on shore from the sea, in cases of wreck or otherwise," *and the same will be allowed you in your accounts. Given under my hand, at* ———, *in the said county of* ———, *this* ——— *day of* ———, *in the year of our Lord* ———.

J. P.

Burning.

§ I. *Punishable at Common Law.*

II. *Punishable by Statute.*

[3 Ed. 1. c. 15. — 5 & 6 Ed. c. 10. — 13 Ed. 1. c. 46. — 23 H. 8. c. 1. — 25 H. 8. c. 3. — 37 H. 8. c. 6. — 1 Ed. 6. c. 12. — 5 & 6 Ed. 6. c. 10. — 4 & 5 Ph. & M. c. 4. — 43 Eliz. c. 13. — 22 & 23 Car. 2. c. 7. — 4 & 5 W. c. 23. — 1 Ann. st. 2. c. 9. — 1 G. st. 2. c. 48. — 6 G. c. 16. — 9 G. c. 22. — 10 G. 2. c. 32. — 22 G. 2. c. 33. — 27 G. 2. c. 15. — 28 G. 2. c. 19. — 9 G. 3. c. 29. — 14 G. 3. c. 78. — 43 G. 3. c. 58. — 52 G. 3. c. 130.]

I. Punishable at Common Law.

Houses burning at the common law.

MALICIOUSLY and voluntarily burning the house of another by night or by day is felony at the common law. 1 Haw. c. 39.

Maliciously and voluntarily.] For if it be done by mischance or negligence, it is no felony. 3 *Inst.* 67.

As if an unqualified person happen to set fire to the thatch of a house; or even if a man were shooting at the poultry of another, by which means the house is fired, that is, provided he did not mean to steal the poultry, but merely to commit a trespass; for otherwise the first intent being felonious, the party must abide all the consequences. 2 *East's P. C.* 1019.

If a man maliciously intending only to burn one person's house, happen thereby to burn the house of another, it is certain that he may be indicted as having maliciously burned the house of that other; for where a felonious design against one man misseth its aim, and takes effect upon another, it shall have the like construction as if it had been levied against him who suffers by it. 1 *Haw. c.* 39. § 5. 1 *Hale,* 569.

Burning.] Neither a bare intention to burn a house, nor even an actual attempt to do it by putting fire to part of a house, will amount to felony, if no part of it be burned: but if any part of the house be burned, the offender is guilty of felony, notwithstanding the fire afterwards be put out, or go out of itself. 1 *Haw. c.* 39. § 4. 2 *East's P. C.* 1020.

The house.] This extendeth not only to the very dwelling-house, but to all outhouses that are parcel thereof, though not contiguous to it, nor under the same roof; as in the case of burglary, the barn, stable, cow-house, sheep-house, dairy-house, mill-house. 1 *Hale,* 567.

But if the barn or outhouse be not parcel of a dwelling-house, it is not felony unless the barn have hay or corn in it; and then, though it be no parcel of a dwelling-house, it is felony.

See title Burglary for what is considered as parcel of the dwelling-house.

Of another.] But a person seised in fee, or but possessed for years of a house standing by itself at a distance from all others, cannot commit felony in burning the same. So a man so seised or possessed of a house in a town, who burned his own with an intent to burn his neighbour's, but in the event burned his own

only, was not guilty of felony; it was however certainly an offence highly punishable, in regard of the malice thereof, and the great danger to the public which attended it; and the offender was liable to be severely fined, and imprisoned during the king's pleasure, and set on the pillory (a), and bound to his good behaviour. 1 *Haw.* c.39. § 3.

The frequent commission of the latter offence, and the very serious mischief that resulted from its being merely a misdemeanor, at last attracted the attention of the legislature, and the party who would occasion, by burning his own possession, an injury to another, the extent of which, in many cases, cannot be calculated, will be liable to the penalty of death; by 43 *G.*3. c.58. commonly called Lord *Ellenborough's* act. (Vide *post*, p. 520.)

II. Punishable by Statute.

By statute; burning a dwelling-house or barn having corn therein.

By stats. 23 *H.*8. *c.*1. and 25 *H.*8. *c.*3. No person who, shall be found guilty for wilful burning of any dwelling-house, or barn wherein any corn shall be, nor persons abetting, procuring, helping, maintaining or counselling the same, shall be admitted to the benefit of clergy.

There hath been much learned debate how far these statutes, which are repealed by 1 *Ed.* 6. *c.* 12., are revived by 5 & 6 *Ed.* 6. *c.* 10. (*b*) But as the same is enacted in effect by other subsequent statutes, it is now not very material.

Accessary before the fact.

By stat. 4 & 5 *P.* & *M.* *c.* 4. Every person who shall maliciously command, hire, or counsel any person wilfully to burn any dwelling-house, or any part thereof, or any barn then having corn or grain in the same, shall not have the benefit of his clergy. By thus taking away clergy from the accessary *before*, clergy is by necessary construction taken from the principal in the like instances. 2 *East's P. C.* 1017. *Fost.* 334.

Accessary after the fact.

But accessaries *after* shall have their clergy. 1 *Hale*, 573.

43 Eliz. c.13. Burning a barn or stack of corn in the northern counties.

By stat. 43 *El.* *c.* 13. § 2. Whoever shall wilfully and of malice burn, or cause to be burned, or aid, procure, or consent to the burning of any barn, or stack of corn or grain, within any of the counties of *Cumberland*, *Northumberland*, *Westmorland*, and *Duresme*, shall be guilty of felony without benefit of clergy. And justices of the peace in sessions may hear and determine the same.

22 & 23 C.2. c.7. Burning in the night, stacks of corn or hay, barns, houses, kilns.

By stat. 22 & 23 *Car.* 2. *c.* 7. § 2. "Where any person or persons shall in the night-time maliciously, unlawfully, and willingly burn, or cause to be burned or destroyed, any *ricks* or *stacks* of corn, hay, or grain, barns or other houses or buildings, or kilns of any person or persons whatsoever; every such offence shall be adjudged felony:" but by § 3. "without corruption of blood," &c.

And the judges of assize, or three justices of the peace, (1 *Q.*) may determine the same, so that the prosecution be within six months:

And the said justices, on request of the party injured, shall issue their warrant for apprehending all such persons as shall be suspected thereof, and take their examination;

(*a*) Vide stat. 56 G. 3. c. 138. tit. Pillory, Vol. III.
(*b*) See 2 *East's P. C.* c. 21. § 2.

22 & 23 C.2. c.7.

And shall cause all others, who to them shall seem likely to make discovery to appear before them, and give information on oath; yet so as no person to be examined shall be proceeded against for any offence, concerning which he shall be examined as a witness, and shall upon his examination make a true discovery:

And if such witness, being duly summoned, shall refuse to appear, or to be examined, they may commit him to the common gaol, till he submit to be examined upon oath:

And they shall issue warrants for summoning jurors:

And if any person, being found guilty (in order to avoid judgment of death, or execution thereupon), shall make his election to be transported, the court shall cause judgment to be entered that he be transported to some of the plantations (to be mentioned in the judgment) for seven years; and if he shall return before the expiration of the term, he shall suffer death as a felon, and as if no such election to be transported had been made by him.

It was never doubted but that burning *one rick*, &c. was within the statute, though the statute has *ricks* in the plural. See *Hassel's case*, 1 *Leach*, 1.

9 G.1. c.22. Burning, by the Black Act.

By stat. 9 *G*. 1. *c*. 22. § 1. Commonly called the Black Act, (which is inserted more at length *ante*, tit. Black Act — 369. 363.) if any person shall set fire to a house, barn or outhouse, or to any hovel, cock, mow, or stack of corn, straw, hay, or wood. [And

10 G.2. c.32.

by stat. 10 *G*. 2. *c*. 32. § 6. If any person shall wilfully and maliciously set on fire any mine, pit, or delph of coal or cannel coal, (which offence, by § 4. of this act, is incorporated with the offences in the Black Act,) he shall be guilty of felony without benefit of clergy.

9 G.1. c 22.

By stat. 9 *G*. 1. *c*. 22. § 12. And if any person shall apprehend, or cause to be convicted, any such offender, and shall be killed or wounded so as to lose an eye or the use of a limb in endeavouring to apprehend him, on proof thereof made at the sessions of the county, liberty, or place, where the offence was committed, or the party killed or wounded, and on certificate thereof from thence, the party wounded in the one case, or the executors of the party killed in the other, shall be entitled to the sum of 50*l*., to be paid by the sheriff in thirty days, the same to be allowed to him in passing his accounts in the exchequer.

§ 7. And the hundred shall be chargeable, as in cases of robbery, for damages sustained (not exceeding 200*l*.)

A common gaol within the act.

House.] Upon the construction of stat. 9 *G*. 1. *c*. 22. it was holden that a common gaol is a house within the meaning of it. The entrance to the prison was through the dwelling-house of the gaoler, and the prisoners were sometimes allowed to lie in it. All the judges held that the dwelling-house was to be considered as part of the prison, and the whole prison was the house of the corporation to whom it belonged. One set of the counts laid it to be the house of the corporation, another of the gaoler, and a third of the person whom the gaoler suffered to live in the dwelling-house. *Donnovan's case*. *Lanc*. 1770. 2 *Bl. Rep*. 682. 2 *East's P. C.* 1020.

Outhouse.

Outhouse.] *Sarah Taylor* was indicted for setting fire to an outhouse, commonly called a paper-mill. It appeared that she had set fire to a large quantity of paper which was drying in a

loft annexed and belonging to the mill; but no part of the mill itself was consumed; and therefore the judges thought the case not within the statute on that ground; though another doubt was started, whether a *mill* were an *outhouse* within the meaning of the act. *Sarah Taylor's case*, 2 *East's P. C.* 1020. 1 *Leach*, 49.

North was indicted for feloniously, wilfully, and maliciously setting fire to a certain outhouse of *J. Taylor*, at *Knaresborough*, against the form of the statute (9 *G.* 1. *c.* 22.) It appeared that the prisoner had set fire to and burned part of a building of the prosecutor, situated in a yard of his at the back of his dwelling-house, which was in the street of the town of *Knaresborough*. The building was four or five yards distant from the dwelling-house, but not joined to it. The yard was enclosed on all sides, in one part by the dwelling-house, in another part by a wall, and in a third part by a railing, which separated it from a field, and in the remaining part by a hedge. The buildings set fire to and in part burned, consisted of a stable and a chamber over it, which was used by the prosecutor as a shop for keeping and dressing flax. It was objected on behalf of the prisoner that this building was not an *outhouse* within the stat. 9 *G.* 1. *c.* 22., as that must be understood to mean outhouses, which in contemplation of law were not part of the dwelling; which it was insisted this was, and that the indictment should have been for arson at common law. The jury found the prisoner guilty, and the point was reserved. In *November* 1795, all the judges (except *Hotham* B. who was absent) agreed that the verdict was right. They said that though for some purposes this might be part of the dwelling-house, yet still in fact it was an outhouse. And that the stat. 9 *G.* 1. did not alter the nature of the crime, or create any new offence, but only excluded the principal from clergy more clearly than he was before. *North's case*, *York Sum. Ass.* 1795. 2 *East's P. C.* 1021.

By stat. 3 *Ed.* 1. *c.* 15. Such as be taken for house-burning, feloniously done, are not bailable by justices of the peace. 2 *Inst.* 189.

3 Ed. 1. c. 15. House burning not bailable.

In the case of *R.* v. *Judd*, 2 *T.R.* 255., who was committed for *wilfully and maliciously setting fire to a parcel of unthrashed wheat*, the court were of opinion, that as the statute had only made it felony *to set fire to a cock, mow, or stack of corn*, the warrant of commitment did not charge the defendant with a felony; and he was therefore admitted to bail.

Burning parcel of unthrashed corn.

If any ship's officer or mariner shall wilfully burn the ship to which he belongeth, or procure the same to be done, to the prejudice of the owner of the ship or goods, he shall be guilty of felony without benefit of clergy.

1 An. st. 2. c. 9. Burning a ship.

And by the articles of the navy, stat. 22 *G.* 2. *c.* 33. every person who shall unlawfully burn or set fire to any magazine, or store of powder, or ship, boat, ketch, hoy or vessel, or tackle or furniture thereunto belonging, not appertaining to an enemy or rebel, shall be punished with death by the sentence of a court-martial.

22 G. 2. c. 33. Art. 25. Setting fire to magazine, &c.

By stat. 9 *G.* 3. *c.* 29. § 2. If any person shall burn or set fire to any wind saw-mill, or other wind or water-mill, or any of the works belonging thereto, he shall be guilty of felony without benefit of clergy. And if any person shall burn or set fire to any machine or engine belonging to any mine, he shall be guilty of felony, and transported for seven years.

9 G. 3. c. 29. Burning mills or engines belonging to mines.

Burning a mill-house not parcel of a dwelling house is not felony within 9 G.3. c.29.

An action was brought against the hundred of *Shrewsbury* for damages sustained by the wilful setting on fire "of *a certain outhouse*, and certain *mill* wheels, works, and machinery in the same." The building was a *mill-house*, and though it was under the same roof with a cottage, where one of the plaintiffs formerly slept, there was no interior communication between them. There was a verdict for the plaintiff, subject to a case, and upon argument in K. B. *Per* Lord *Ellenborough* C. J. Though in an indictment for arson, it need not state the offence to have been committed against the *mansion-house*, yet in evidence, the building burned must be proved to have been in some way connected with the mansion-house so as to shew it parcel thereof. The 9 *G.* 3. *c.* 29. was passed to extend to mills, parcel or not of the dwelling-house: but it gives no remedy against the hundred. The action then must bring the case within stat. 9 *G.* 1. *c.* 22., the words of which are house, barn or outhouse: that is, such outhouse of which arson might be committed at common law. These premises are not of any of these descriptions. *Hiles* v. *Hundred of Shrewsbury*, 3 *East*. 457.

43 G.3. c.58. Lord *Ellenborough's* act. Maliciously setting fire to buildings. (see *Farrington's* case. *p.* 521.

And by stat. 43 *G.* 3. *c.* 58. intituled "*An act for further preventing* (*among other things*) *the malicious setting fire to buildings*." and which, after reciting that certain heinous offences, committed "with intent by burning to destroy or injure the buildings, and other property of H. M.'s subjects, or to prejudice persons who have become insurers of or upon the same, have of late been frequently committed," it is enacted that "if any person or persons shall wilfully, maliciously, and unlawfully set fire to any house, barn, granary, hop-oast, malt-house, stable, coach-house, outhouse, mill, warehouse or shop, whether such house, barn, granary, hop-oast, malthouse, stable, coach-house, out-house, mill, warehouse, or shop shall then be in the possession of the person or persons so setting fire to the same, or in the possession of any other person or persons, or of any body corporate, with intent thereby to injure or defraud H. M. or any of H. M.'s subjects, or any body corporate, that then and in every such case, the person or persons so offending, their counsellors, aiders, and abettors, knowing of and privy to such offence, shall be and are hereby declared to be felons, and shall suffer death as in cases of felony without benefit of clergy."

The offence, therefore, of arson, whether committed with respect to the possession of the offender, or of the party whom it is designed to injure or prejudice, is at last reached by this comprehensive and perspicuous statute, and that which was heretofore a misdemeanor is now made a capital felony.

A school-room holden to be well described either as an outhouse, or part of the dwelling-house.

Outhouse] *Jacob Winter* was convicted before *Richards* B. at *Reading Lent Assizes*, 1815, upon an indictment, the 1st count of which charged him with feloniously, &c. setting fire to and burning and consuming a certain outhouse of one *Thomas Rogers*, in the parish of *Cheveley*, in the county of *Berks*, against the king's peace. The 2d count charged the same offence to be against the statute: 5th count charged with setting fire to, &c. a certain house of *Rogers*: 6th count charged, that *Winter* set fire to the said house, then being in the possession of said *Rogers*, with intent thereby to injure and defraud him against the form of the statute. It was proved very clearly, that the prisoner set

fire to and burnt the building in question. *Thomas Rogers* lived in the house very near to which was a school-room, which was burnt. The school-room is separated from the dwelling-house by a narrow passage about a yard wide. The roof is thatched with straw. The roof of the house, which is tile, reaches over part of the school. The dwelling-house, and the school, and a garden, and other things, and the court, which incloses all, were rented by *Rogers* of the parish for 6*l. per annum*. There was one continued fence round all the premises. Nobody but *Rogers* and his family had a right to come within the fence. Upon this fact, it was urged in behalf of the prisoner, that the building burnt was not a house or outhouse within the statute. The point was referred to the judges, and judgment given by *Dallas* J. at the following assizes at *Abingdon*, that the building was correctly described in the indictment, either as an outhouse or part of the dwelling-house. *Winter's case, Reading Lent Ass.* 1815. *MS. C. C. R.*

43 G. 3. c. 58.

Mill] *William Farrington* was tried before *Le Blanc* J. at *Staffordshire Summer Ass.* 1811, on an indictment, charging, that he, on the 10th *October* 1808, feloniously, maliciously, and unlawfully, did set fire to a certain mill at *Alrewas*, in the county of *Stafford*, the same mill then being in the possession of *Thomas Dicken, Francis Dicken*, and four other persons (partners), with intent to injure and defraud the said several persons (naming them) then being liege subjects of the king, against the form of the statute. — The fact of the prisoner's setting fire to the mill was clear from his own confession. But it was stated by the witnesses for the prosecution, the clerks of Messrs. *Dicken* and Co., that the prisoner was a harmless inoffensive man, that there never had been any quarrel or disagreement between him and his masters, or between him and any of the clerks, and that they were not aware of any motive which could induce him to do the act. The jury found the prisoner guilty; but sentence was respited, upon a doubt, whether, under the particular words of the statute 43 *G.* 3. *c.* 58., an intent to injure or defraud some person, or body corporate, was not necessary to be proved, or at least some fact from which such intent could be inferred beyond the mere act of setting the mill on fire. The statute 9 *G.* 3. *c.* 29. (which makes it felony without benefit of clergy, wilfully or maliciously to burn or set fire to any mill,) limits the prosecution for such offence to eighteen months after the offence committed, and the offence which was the subject of the present indictment having been committed near three years before any prosecution commenced, the indictment could only be supported, if at all, on stat. 43 *G.* 3. *c.* 58. At *Lent Ass.* 1812, *Graham* B. delivered the opinion of the judges, that burning a mill under circumstances such as appeared in this case, must necessarily have been done with intention to injure, though the principal object of Lord *Ellenborough*'s act was to comprize the cases of a person's burning the house, &c. or mill of which he was tenant or owner, to the injury of his landlord or neighbour, or to defraud insurers. Sentence of death was accordingly passed upon the prisoner, but he afterwards received a pardon, on condition of being imprisoned one year, and kept to hard labour in the house of correction. *Farrington's Case, Staff. Sum. Ass.* 1811. *MS. C. C. R.*

As to the intent to injure.

52 G.3. c.130. Wilfully setting fire to any buildings, engines, &c. used for trade, made felony without clergy.

By stat. 52 *G*.3. *c*.130. § 1. After reciting stats. 9 *G*.1. *c*.22., 9 *G*.3. *c*. 29., 43 *G*.3. *c*. 58. and other statutes, and that it was expedient and necessary that more effectual provisions should be made for the protection of property, not within the provisions of the said acts, it is enacted, that "every person who shall wilfully or maliciously burn or set fire to any buildings, erections, or engines, which shall be used or employed in the carrying on, or conducting of any trade or manufactory, or any branch or department of any trade or manufactory of goods, wares, or merchandize, of any kind or description whatsoever, or in which any goods, wares, or merchandize, shall be warehoused or deposited, shall, upon being lawfully convicted thereof, be adjudged guilty of felony without benefit of clergy."

1 G.1. st.2. c.48. Burning wood growing.

By 1 *G*. 1. *st*. 2. *c*. 48. § 4. If any person shall maliciously set on fire or burn, or cause to be burnt, any wood, underwood, or coppice, or any part thereof, it shall be felony, and the offender liable to all the penalties and forfeitures as other felons now are. 2 *East's P. C.* 1053.

6 G.1. c.16.

By stat. 6 *G*. 1. *c*. 16. § 1. for explaining and amending stat. 1 *G*. 1. *st*. 2. *c*. 48. If any person shall by day or night burn any wood-springs or springs of wood, trees, poles, wood, tops of trees, underwoods or coppice-woods, thorns, or quicksets, without the consent of the owner, or of the person chiefly intrusted with the care thereof; such lords of manors, owners, and proprietors of the same as are damaged thereby shall have such recompense of the inhabitants of the parishes, towns, hamlets, villages, or places adjoining on such wood-springs or springs of wood, or coppices, and recover such damages as in and by the 13 *Ed*. 1. *c*. 46. unless the party so offending shall by such parish, &c. be convicted of such offence, within six months from the committing such offence.

By § 2. If any person so offend, either in a riotous, open, and tumultuous, or in a secret and clandestine manner, it shall be lawful for any two justices of the peace of the county, &c. where the offence shall be committed, or for the justices in sessions, upon complaint made by any inhabitant of the said parish, &c. or of the owner of such tree, wood, or coppice, or of any other, to apprehend the offender for the said offences, and to hear and finally determine the same: and upon conviction such justices shall inflict all the same penalties and punishments in stat. 1 *G*. 1. *st*. 2. *c*. 48. mentioned, for all the offences in this present act expressed, as if the said offences were mentioned in the said act of 1 *G*. 1.

Note. — The only punishment assigned by 1 *G*. 1. *st*. 2. *c*. 48. to the offence of burning, is in the 4th sect. as above stated, which points only generally to the punishment other felons by the law *then* were liable to. The punishments in the 1st, 2d, and 3d sections of that act specifically mentioned, being for mere destruction of timber, &c. See Vol. V. *tit.* Wood.

13 Ed. 1. c.46.

The stat. 13 *Ed*. 1. *c*. 46. enacts, that if it cannot be known by the verdict of assize or jury, who did the fact, the towns near adjoining shall be distrained to levy the hedge at their own cost, and to yield damages.

According to *R*. v. *The township of Huddersfield*, 11 *East*, 349., An action upon the case lies upon stat. 6 *G*. 1. *c*. 16. § 1. by the

party grieved to recover damages against the inhabitants of the adjoining township for trees, &c. unlawfully and feloniously burnt by persons unknown.

4 & 5 W. c. 23. Burning ling, goss, furze, or fern.

By stat. 4 & 5 *W.* *c.* 23. § 11. No person shall on any mountains, hills, heaths, moors, forests, chases, or other wastes, burn between *February* 2, and *June* 24, any grig, ling, heath, furze, goss, or fern; on pain of being committed to the house of correction for any time not exceeding one month, nor less than ten days, there to be whipped and kept to hard labour.

28 G. 2. c. 19. Burning goss, furze, or fern, in forests.

By stat. 28 *G.* 2. *c.* 19. § 3. After reciting that the laws then in being were not sufficient to prevent the offences, it is enacted, "that if any person or persons, not having a right or legal licence to do the same, shall, after the 1st of *August* 1755, set fire to, burn, or destroy, or shall abet, aid, or assist in or at the burning or destroying of any goss, furze, or fern (*a*), growing or being in or upon any forest or chase (*b*) within *England*, without the licence or consent of the owner or proprietor, or the person chiefly entrusted with the care, oversight, and custody of such forest or chase, or some part thereof, or shall be aiding therein, and being brought before a justice shall be thereof convicted by confession or oath of one witness or on view of the justice, he shall forfeit not exceeding 5*l.* nor less than 40*s.*; half to the informer, and half to the poor of the parish; if not forthwith paid, to be levied by distress, and if no sufficient distress can be found, the justice may commit him to the common gaol for any time not exceeding three months, nor less than one month."

37 H. 8. c. 6. Burning a laden cart and fire-wood.

By stat. 37 *H.* 8. *c.* 6. § 4. If any person shall maliciously, willingly, and unlawfully burn, or cause to be burnt, any wain or cart, laden with coals, or with any goods or merchandises, or any heap of wood prepared, cut, or felled for making coals, or billets, or talwood; he shall forfeit treble damages to the party grieved, to be recovered by action of trespass; and also 10*l.* as a fine to the king.

6 Ann. c. 31. 14 G. 3. c. 78. Punishment of a servant carelessly firing a house.

By stats. 6 *Ann.* *c.* 31. § 3., 14 *G.* 3. *c.* 78. § 84. If any menial, or other servant or servants, through negligence or carelessness, shall fire, or cause to be fired, any dwelling-house, or outhouse or houses, or other buildings, and such servant or servants being thereof convicted on the oath of one witness before two justices, shall forfeit 100*l.* to the churchwardens or overseers of the parish where the fire shall happen, to be distributed by them amongst the sufferers, in such proportions as to the said churchwardens shall seem just; and in case of default or refusal to pay the same immediately on demand by the said churchwardens, such servant or servants shall by warrant of two justices be committed (D) to the common gaol, or to some workhouse or house of correction, as the justices shall think fit, for eighteen months, there to be kept to hard labour. And see stat. 5 *G.* 4. *c.* 18. *post, tit.* Distress.

D.

Threatening to burn a house.

By the commission of the peace, any justice may cause to come before him all those who to any of the people concerning the

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(*a*) Omitting the word *heath*, which is, however, mentioned in the margin of Runnington's edition of the Statutes.

(*b*) Omitting the other general description of places in the statute of *William*.

firing of their houses have used threats, to find sufficient security for the peace or their good behaviour towards the king and his people; and if they shall refuse to find such security, may cause them to be safely kept in the king's prisons, until they shall find security.

27 G. 2. c. 15.

And by stat. 27 *G*. 2. *c*. 15. If any person shall knowingly send any letter, without any name subscribed thereto, or signed with a fictitious name or names, letter or letters, threatening to burn any house, outhouse, barn, stack of corn or grain, hay or straw, though no money, venison, or valuable thing be demanded in or by such letter, he shall be guilty of felony without benefit of clergy.

A.

A. Information for setting Fire to and burning a Dwelling-House; on stat. 43 *G*. 3. *c*. 58. § 1. *ante*, p. 520.

County of ——— to wit. *BE it remembered, that on the* ——— *day of* ———, *in the* ——— *year of the reign, &c. at* ———, *in the said county,* A. B. *of* ———, *yeoman, cometh before me* J. P. *esquire, one of his majesty's justices of the peace in and for the said county of* ———, *and complaineth and maketh oath, that on the* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———, *his dwelling-house,* [or, *barn*, &c. according to the fact] *situate at the parish of* ———, *in the said county, was, as he verily believes, wilfully, maliciously, and unlawfully set fire to,* [*and burnt*, according to the fact] *and that he the said* A. B. *hath just cause to suspect, and doth suspect that one* C. D., *of* ———, *in the said county, labourer, did unlawfully, maliciously, and feloniously set fire to* [*and burn*, according to the fact] *the said dwelling-house; and thereupon the said* A. B. *prayeth the judgment of me in the premises, that my warrant may issue against the said* C. D. *to answer the premises.* A. B.

Sworn and exhibited before me, the day and year first above mentioned.

J. P.

B.

B. Warrant thereon.

County of ——— to wit. To the constable of the parish of ———, in the said county.

WHEREAS A. B., of ———, *yeoman, hath this day made complaint on oath before me* J. P. *esquire, one of his majesty's justices of the peace in and for the said county, that* [state the offence as in the information.] *These are therefore to command you forthwith to apprehend and bring before me, or some other of his majesty's justices of the peace, acting in and for the said county, the body of the said* C. D. *to answer the said complaint, and to be further dealt with according to law. Given under my hand and seal, &c.*

J. P. (*L. S.*)

C. Commitment thereon.

C.

County of ——— to wit. } J. P. esquire, one of his majesty's justices of the peace for the said county of ———, to the constable of the parish of ———, in the said county, and to the keeper of the common gaol at ———, in the said county.

THESE are in his majesty's name to charge and command you the said constable of ———, forthwith to convey and deliver into the custody of the said keeper of the said gaol the body of C. D., *this day brought before me* J. P. *esquire, one of his majesty's justices of the peace in and for the said county, by* O. P. *constable of ———, and charged on the oath of* A. B. *of ———, yeoman, with having on the ——— day of ——— last past, at ———, in the parish of ———, in the said county, wilfully, maliciously, and feloniously set fire to* [*and burnt,* as in information] *the dwelling-house,* [*barn, &c.* as in information] *of the said* A. B., *and you the said keeper of ——— are hereby required to receive him the said* C. D. *into your custody in the said gaol, and him there safely to keep until he be delivered from your custody by due course of law. Given under my hand and seal, the ——— day of ———, A.D.* 18—. *J. P.* (*L. S.*)

D. Commitment of a Servant for negligently setting Fire to a Dwelling-House, under stats. 6 *Ann. c.* 31. § 3. and 14 *G.* 3. *c.* 78. § 84. *p.* 523.

D.

County of ——— } To the constable of ———, and to the keeper of the house of correction at ———, in the ———.

WHEREAS A. B., *servant of* C. D., *of, &c. was on the day of the date hereof lawfully convicted before us* W. S. *and* S. P. *esquires, two of his majesty's justices of the peace for the said county, upon the oath of* E. F. *of, &c. That he the said* A. B. *did, on the ——— day of ——— last, through negligence, set fire to, or cause to be fired, the dwelling-house of the said* C. D., *situate at ———, in the parish of ———, in the said county, by reason whereof, and by force of the statutes in that case made and provided, he the said* A. B. *hath forfeited the sum of one hundred pounds: And whereas the churchwardens of the parish of ———, where the said fire did happen, have made appear unto us upon oath, that immediately upon the said conviction, they did duly demand of the said* A. B. *the sum of one hundred pounds, to be distributed by them as the law directs, but the said* A. B. *did refuse and neglect to pay the same: These are therefore to command you, in his majesty's name, to convey the said* A. B. *to the house of correction at ——— aforesaid, and deliver him to the keeper thereof, together with this precept; and you the said keeper are hereby commanded to receive the said* A. B. *into your custody, and him detain and keep in the said house of correction to hard labour, for the space of eighteen months next ensuing. Given under our hands and seals, &c.*

Burning in the Hand of Felons. See Clergy.

Butcher.

[4 H. 7. c. 3.—2 & 3 Ed. 6. c. 15.—3 C. c. 1.]

2 & 3 Ed. 6. c. 15. Conspiring to raise the price of victuals.

BY stat. 2 & 3 *Ed.* 6. *c.* 15. If any butchers shall conspire not to sell their victuals but at certain prices, every such person shall forfeit for the first offence 10*l.* to the king, and if not paid in six days he shall suffer 20 days' imprisonment, and shall only have bread and water for his sustenance; for the second offence 20*l.* in like manner, or the pillory (*a*); and for the third offence 40*l.* or pillory, and the loss of an ear, and to be taken as an infamous man, and not to be credited in any matter of judgment; and the sessions or leet may determine the same. See also title **Forestalling.**

4 H. 7. c. 3. Not to kill in a walled town.

By stat. 4 *H.* 7. *c.* 3. No butcher shall slay any beast within any walled town, except *Carlisle* and *Berwick;* on pain of forfeiting for every ox 12*d.*, every cow and other beast 8*d.*, half to the king, and half to him that will sue.

Selling unwholesome flesh.

A butcher that selleth swine's flesh measled, or flesh dead of the murrain, shall for the first time be grievously amerced, the second time suffer judgment of the pillory, the third time to be imprisoned and make fine, and the fourth time forswear the town. Ordinance for bakers. *Hawk. Stat. V.* 1. *p.* 181.

3 C. c. 1. Not to kill or [sell on t]he [Lord's d]ay.

By stat. 3 *C. c.* 1. If any butcher shall kill or sell any victual on the Lord's day, he shall forfeit 6*s.* 8*d.*, one-third to the informer, and two-thirds to the poor, on conviction before one justice, on his own view, or confession, or oath of two witnesses, to be levied by the constable or churchwarden.

For offences relating to Hides, see *tit.* **Leather**: also, as to the repeal of stat. 1 *J.* c. 22.

Butter and Cheese.

§ I. *Concerning the Packing, Weight, and Goodness of Butter.* [13 & 14 C. 2. c. 26.—4 W. c. 7.—36 G. 3. c. 86.—38 G. 3. c. 73.]

II. *Concerning the Shipping of Butter and Cheese for* London. [4 W. c. 7.]

I. Concerning the Packing, Weight, and Goodness of Butter.

Former acts repealed.

BY stat. 36 *G.* 3. *c.* 86. § 19., the 13 & 14 *C.* 2. c. 26., and so much of 4 *W. c.* 7. as discharges persons from the effect of any part of 13 & 14 *C.* 2. for preventing frauds in the sellers of butter after

(*a*) The punishment of the pillory is abolished (except in cases of perjury, &c. by stat. 56 G. 3. c. 138. See tit. **Pillory**, &c. Vol. III.

the factor or buyer hath contracted for the same, are repealed; and new regulations are made respecting the packing, weight, and sale of butter, as follow: — 36 G. 3. c. 86.

Regulations for making vessels for packing butter.

By stat. 36 *G.* 3. *c.* 86. § 1. Every cooper or other person who shall make any vessel for the packing of butter shall make the same of good and well-seasoned timber, and tight, and not leaky, and shall grove in the heads and bottoms thereof; and every such vessel shall be a tub, firkin, or half firkin, and no other; and shall, when delivered by such cooper or person making the same, be of the weight and proportion, and capable of containing the several quantities of butter hereinafter mentioned, (viz.) every tub shall weigh of itself, including the top and bottom, not less than 11lb. nor more than 15lb. avoirdupois weight, and neither such top nor bottom shall be more than five-eighths of an inch thick in any part thereof, and shall be capable of containing 84lb. average of butter, and not less; every firkin shall weigh of itself, including the top and bottom, not less than 7lb. nor more than 11lb., and neither the top nor bottom shall be more than four-eighths of an inch thick in any part, and it shall be capable of containing not less than 56lb. of butter; and every half firkin shall weigh of itself, including the top and bottom, not less than 4lb. nor more than 6lb., and neither the top nor bottom shall be more than three-eighths of an inch thick in any part, and it shall be capable of containing not less than 28lb. of butter, on pain of forfeiture by the cooper or other person making the same, of 10*s.* for every such vessel.

Weight of the tub.

Weight of the firkin.

Of the half firkin.

Name, place of abode, and weights to be put on such vessels.

§ 2. And every such maker, before such vessel shall go out of his possession, shall, on the outside of the bottom, with an iron, brand his christian name and surname at full length, in permanent and legible letters, together with the exact weight or tare thereof, on the like penalty.

38 G. 3. c. 73.

And by stat. 38 *G.* 3. c. 73. § 1. every such maker shall moreover mark in like manner, in addition to his name, his place of abode or dwelling, in the following manner; viz. if he dwell in a city or market town, then the name thereof; if in a village, township, liberty, hamlet, or other division of a parish, then the name of the parish wherein the same is situate; and if in an extra-parochial place, then the name of the next adjoining parish; on pain of forfeiting 10*s.* for every default therein.

Factors buying or selling butter in vessels not legally marked

§ 2. And every factor or agent for buying or selling butter for others, who shall buy, sell, or offer to sale, or have in his custody for sale, or shall order, consign, forward, or send any vessel containing butter for sale, which shall not be made, and externally marked, and have the butter therein imprinted, according to the directions of this and the above act, shall forfeit 20*s.* for every such offence.

Or cheesemongers and others.

§ 3. And every cheesemonger, or seller or dealer in butter on his own account, who shall offer for sale, or have in his possession for sale, any vessel containing such butter, which shall not be externally marked as aforesaid, shall forfeit 10*s.* for every such offence.

36 G. 3. c. 86.
Directions for packing of butter.

By stat. 36 *G.* 3. *c.* 86. § 3. And every dairyman, farmer, or seller of butter, or other person who shall pack any butter for sale, shall pack the same in vessels so made and marked as aforesaid and no other, and shall properly soak and season such vessels before such packing, and when so soaked and seasoned shall, on

36 G.3. c.86.

the bottom thereof on the inside, and on the top on the outside, with an iron, brand his christian and surname at full length in like letters; and also on the outside of the top, and on the bouge or body thereof, the true weight or tare of such empty vessel when so soaked and seasoned, and also his name in like manner on the bouge or body across two different staves at least, to prevent the same being taken out and changed; and shall distinctly and at full length imprint his christian and surname upon the top of the butter in such vessel when filled, on pain of forfeiting 5*l.* for every default thereof. (A.)

A.

Quantities to be packed in each vessel.

§ 4. And every dairyman, farmer, or seller of butter, or other person packing butter for sale, shall (exclusive of the tare of such vessel) pack in every tub not less than 84lb., firkin 56lb., and half firkin 28lb. net, of good and merchantable butter; and no butter which is old or corrupt shall be mixed or packed up into any such vessel with that which is new and sound, nor shall any whey butter be packed or mixed with that which is made of cream, but every such vessel shall be of one sort and goodness throughout; and no butter shall be salted with any great salt, but with fine small salt, and not intermixed with more than is needful for its preservation; on pain of forfeiting 5*l.* for every offence.

Butter not to be mixed.

What salt to be used.

To deliver the full quantity.

§ 6. And every cheesemonger, dealer in butter, or other person who shall sell any tub, firkin, or half firkin shall deliver therein the full quantity aforesaid, and in default shall be liable to make satisfaction for what is wanting, and be liable to an action for recovery of such satisfaction, with costs.

Practising fraud in the sale of butter.

§ 5. And if any change, alteration, fraud, or deceit shall be used or practised, either in the vessel wherein butter is packed for sale as aforesaid, or in the butter itself, whether in quantity, quality, weight, or otherwise, or in any such brands or marks as aforesaid, or in the staves whereon the same shall be placed, or in any other manner howsoever after the packing thereof for sale as aforesaid; every person concerned therein shall forfeit 30*l.* for every such offence.

Not to be re-packed for sale again.

§ 7. And no cheesemonger, dealer, or other person, shall re-pack for sale any butter in any such vessel as aforesaid; on pain of forfeiting 5*l.* for every tub, firkin, or half firkin so re-packed.

Foreign butter.

§ 8. Provided, that no person shall be liable to any of the penalties of this act for using any such vessel as aforesaid after the *British* butter packed therein hath been taken thereout, for the re-packing for sale any foreign butter, who shall first entirely cut out or efface the names of the original dairyman, farmer, or seller of butter, leaving the name and tare of the cooper, and the tare of the original dairyman, farmer, or seller thereon, and shall afterwards with an iron brand his name in words at length, and the words *foreign butter* in permanent and legible letters, upon the bouge or body of every such vessel across two staves at the least, to denote that such butter is foreign butter.

Counterfeiting or forging marks.

§ 9. And if any person shall hereafter be convicted of counterfeiting or forging any of the names or marks of any such owners, farmers, or dairymen as aforesaid, or any part thereof, or cause the same to be done; he shall for every offence forfeit 40*l.*

Recovery and application of penalties.
36 G.3. c.86.
38 G.3. c.73.

By § 13, 14. and stat. 38 *G.* 3. *c.* 73. § 4. All penalties above 5*l.* are to be recovered in the courts at *Westminster*. And all offences against this act, the mode of determining which is not hereinbefore prescribed, and where the penalty shall not exceed 5*l.*, shall be

heard and determined by one justice of the county, &c. or place where the offence shall be committed, or alleged to be committed, who on proof upon oath by one witness may levy such penalties by distress and sale of the offender's goods, (returning the overplus, after deducting the costs,) to be applied to the use of the informer; and for want of sufficient distress, or if such penalty be not forthwith paid, such offender shall be committed to the gaol or house of correction, without bail, for (not exceeding) three calendar months, nor less than twenty-eight days, unless such penalty and all reasonable charges be sooner paid.

36 G. 3. c. 86.

§ 11. And the conviction may be drawn out in the following form, or to the like effect:

Conviction.

County of ——— to wit. } *BE it remembered, that on this* ——— *day of* ———, A. O. *is convicted before* J. P., *one of his majesty's justices of the peace for the said county of* W. [or, *for the* —— *riding or division of the said county of* ——, or, *for the city, liberty, or town of* ———, as the case may be,] *for that the said* A. O. *on* [time of committing the offence], *at* [place of committing offence], *did* [here state the offence against the act, according to the fact], *contrary to the form of the statute in that case made and provided; and the said* J. P. *doth adjudge him or her to pay and forfeit for the said offence the sum of* ———. *Given under my hand and seal the day and year first above mentioned.*

Which conviction shall be written on parchment, and transmitted to the next sessions, to be there filed.

§ 11, 12. And if any person shall think himself aggrieved by the judgment of the said justice, he may appeal to the next sessions for the county or place where the offence shall be committed, or alleged to be committed, who, upon receiving such conviction drawn up as aforesaid, shall hear and determine the same, and may award costs to either party, as to them shall seem meet.

Appeal.

§ 13. And no such conviction or judgment shall be set aside by such sessions for want of form, if the material facts alleged therein be proved to their satisfaction, nor shall the same be removed by *certiorari* or other process into any other court.

Conviction not to be quashed for want of form, nor removed by certiorari.

§ 16. Provided, that nothing herein shall extend to the packing of butter in any pot or other vessel not capable of containing more than 14 lbs.

Vessels not exceeding 14 lbs.

§ 17. Provided also, that every information, prosecution, or suit, shall be commenced within four months after the offence committed.

Limitation of actions.

II. Concerning the Shipping of Butter and Cheese for London.

By stat. 4 *W. c.* 7. § 4. Every warehouse-keeper, weigher, searcher, or shipper of butter and cheese, shall receive all butter and cheese that shall be brought to him for the *London* cheesemongers, and ship the same without undue preference; and shall have for his pains 2*s.* 6*d.* for every load; and if he shall make default, he shall, on conviction before one justice, on oath of one witness, or

4 W. c. 7. No undue preference.

4 W. c. 7.

confession, forfeit for every firkin of butter 10*s*. and for every weigh of cheese 5*s*., half to the churchwardens and overseers for the use of the poor, and half to the informer, to be levied by the constable by distress and sale.

Book of entry.

§ 5. And he shall keep a book of entry of receiving and shipping the goods on pain of 2*s*. 6*d*. for every firkin of butter, and weigh of cheese, to be levied and applied in like manner; and for want of distress, to be committed till paid.

Master of a ship refusing to take in.

§ 6. A master of a ship refusing to take in butter or cheese, before he is full laden, § 8. (except it be a cheesemonger's own ship sent for his own goods,) shall forfeit for every firkin of butter refused 5*s*. and for every weigh of cheese 2*s*. 6*d*., to be levied and applied in like manner.

Appeal.

§ 10. Persons aggrieved by the determination of the justice may appeal to the next sessions, giving 20*l*. bond with one or more sureties, to the party, to pay costs (within a month after), if he is not relieved on his appeal.

Exception.

§ 9. But this act shall not extend to any warehouse in *Cheshire* or *Lancashire*.

[*Note*.—There are special directions in stat. 8 *G*. *c*. 27. concerning the selling of butter in the city of *York*, and stat. 17 *G*. 2. *c*. 8. concerning the same in *New Malton*.]

A.

A. Information on 36 *G*. 3. *c*. 86. for selling Butter in a Tub, whereon the Seller's Name was not marked, &c.

County of ——— to wit. } *BE it remembered, that on the ——— day of ———, in the year of our Lord ———, at the town of ———, in the said county of* A. B. *of ———, in the said county, yeoman, in his proper person cometh before me,* J. P. *esquire, one of his majesty's justices of the peace in and for the said county, and giveth me, the said justice, to understand and be informed, that* A. O. *of ——— in the said county, farmer and seller of butter, within four months now last past, that is to say, on the ——— day of ——— in the year of our Lord ———, at the town of ———, in the said county, did pack for sale, and sell to the said* A. B., *a quantity of butter, of the weight of about ——— pounds, in a tub* or *vessel, whereon the christian and surname of the said* A. O. *was no where branded with iron, or otherwise marked on the outside,* [or, as the case may be,] *against the form of the statute in that case made and provided, whereby the said* A. O. *hath forfeited for his said offence the sum of* 5*l*.; *wherefore the said* A. B. *prayeth the judgment of me, the said justice, in the premises, and that the said* A. O. *may be summoned to appear before me, the said justice, to answer the same.*

Exhibited before me, A. B.
J. P.

N. B. A summary form of conviction is given in the act. *Vide ante*, p. 529.

Buttons.

[13 & 14 C. 2. c. 13. — 4 W. c. 10. — 10 W. c. 2. — 8 Ann. c. 6. — 4 G. c. 7. — 7 G. st. 1. c. 12. — 36 G. 3. c. 60.]

13 & 14 C. 2. c. 13. 4 W. c. 10. Foreign buttons.

BY stats. 13 & 14 *C.* 2. *c.* 13. § 2. 4 *W. c.* 10. § 2. No person shall sell or offer to sale, or import, any foreign bone, lace, cut work, embroidery, fringe, band strings, buttons, or needle-work, made of thread and silk, or either of them, or any foreign buttons whatsoever; on pain that he who shall offer them to sale shall forfeit the same and 50*l.*, and the importer shall forfeit the same and 100*l.* half to the king, and half to him that shall sue.

Search for foreign buttons.

And by § 3. of both acts, on complaint and information given to a justice of the peace, at reasonable times, he shall issue his warrant to the constable, to enter and search for such manufactures in the shops being open, or warehouses, and dwelling-houses of such persons as shall be suspected, and to seize the same.

10 W. c. 2. Wooden buttons.

By stat. 10 *W. c.* 2. No person shall make, sell, or set on, any buttons made of wood only, and turned in imitation of other buttons; on pain of 40*s.* a dozen, half to the king, and half to him that shall sue in any court of record,

Made of wood only.] *R.* v. *Roberts, H.* 13 W. 1 Ld. *Raym.* 712. An information was exhibited against the defendant, for having made wooden buttons contrary to the statute. Upon trial, the jury found a special verdict, that all the button was of wood, but there was in it a shank of wire. And after argument, judgment was given for the king, namely, that this was a button of wood, notwithstanding the shank, which is no essential part of buttons; for buttons of silk and hair have no shanks.

Cloth buttons.

By the said act 10 *W. c.* 2. No person shall make, sell, or set on, any buttons made of cloth, serge, drugget, frize, camlet, or other stuffs of which clothes are usually made, on pain of 40*s.* a dozen, half to the king, and half to him that shall sue in any court of record.

8 Ann. c. 6.

And by stat. 8 *Ann. c.* 6. No tailor or other person shall make, sell, set on, use, or bind on any clothes, any buttons, or button-holes, made of, or used, or bound with serge, drugget, frize, camlet, or other stuffs of which clothes are usually made; on pain of 5*l.* a dozen, half to the king, and half to him that shall sue in any court of record; or on complaint to two justices, they may summon witnesses, and levy the penalty, and return the overplus, if any be; and if any person is aggrieved, he may appeal to the next sessions.

But by this act no power is given to make distress. The next stat. is the 4 G. *c.* 7. which in the statutes at large is a loose, injudicious, and ungrammatical act, and by its garb may well enough seem to have been drawn up by the tailors or button-makers, whereby it is enacted as follows: —

4 G. 1. c. 7.

No tailor or other person shall make, sell, set on, use, or bind on any clothes, any buttons, or button-holes made of, or used, or bound with cloth, serge, drugget, frize, camlet, or any stuffs that clothes are usually made of (velvet excepted), on pain of 40*s.* for

4 G. 1. c. 7.

every dozen of such buttons and button-holes, or in proportion for any lesser quantity, to be determined by one justice where the offence shall be discovered, or the offender shall inhabit, on oath of one witness, in three months after the offence committed; and to be distributed (charges of conviction first deducted) half to the informer and half to the poor of the parish or place where the offence shall be discovered; if not paid (being lawfully demanded) in fourteen days after conviction, the justice shall issue his warrant to the constable where the offender dwells, or can be found, to levy it by distress and sale; and where no sufficient distress can be found, he shall be committed to the common gaol of the county or place where he shall be found, to be kept to hard labour for three calendar months.

§ 6. Persons aggrieved may appeal to the sessions, giving sufficient notice; and the determination in such sessions shall be final by any order or warrant made by any justice upon any such conviction; and the sessions may allow costs to the party aggrieved.

§ 9. Tailors or other persons, causing their apprentices or servants to make such clothes, shall themselves be subject to the penalties in this act contained.

§ 8. All such clothes, made with such buttons and button-holes, *exposed to sale*, shall be forfeited and seized to the uses in this act, to be recovered and disposed of as the other penalties.

7 G. 1. st. 1. c. 12. Using or wearing cloth buttons.

And by stat. 7 *G.* 1. *st.* 1. c. 12. No person shall *use or wear* on any clothes (velvet excepted) any such buttons or button-holes, on pain of 40*s.* for every dozen of such buttons or button-holes, or in proportion for every lesser quantity of such buttons and button-holes, on conviction by confession, or oath of one witness (A.); and any justice of the peace, where the offence shall be committed, or the offender shall inhabit, shall, on complaint or information on oath, of any credible person, in one month after the offence, summon the party, and on his appearance or contempt, examine the matter, and on due proof by confession, or oath of one witness, convict the offender, and on refusal to pay when demanded, at the time appointed by the justice, cause the forfeiture by his warrant to be levied by distress and sale; the said penalties to be half to him on whose oath the party shall be convicted, and half to the poor of the parish where the offence shall be committed. And persons aggrieved may appeal to the next quarter sessions, giving eight days' notice; and the judgment of the said sessions shall be final.

(A.)

To him on whose oath the party shall be convicted.] This is almost the only instance where a share of the penalty is given in express words, in a popular action, to the party on whose oath any person is convicted; and the contrary doctrine seems generally to prevail, that the defendant shall not be condemned upon the sole testimony of the plaintiff, swearing for his own interest. It is certainly against the common law, that such a person should be a witness at all; and therefore his right to give evidence in his own cause, and the power to convict the defendant upon that sole evidence, must depend on the express words of some statute.

36 G. 3. c. 60. Ordering false marks on buttons.

By 36 *G.* 3. *c.* 60. § 1. No person who shall order or apply for any metal buttons from any manufacturer or maker of buttons shall direct the words *gilt* or *plated*, or any other word, letter,

figure, mark, or device indicating the quality, to be printed, cast, stamped, or marked in or upon any part of such buttons, or any word, letter, figure, mark, or device, whether the same do or do not indicate the quality, to be printed, &c., or marked in or upon the underside of such buttons, unless such person do at the same time order such buttons to be gilt with gold or plated with silver respectively; and no person shall procure or purchase any metal buttons not being so gilt or plated, having the words gilt or plated, or any other word, &c. or device printed, &c. or marked thereon, or any word, &c. printed, &c. on the underside, whether the same do or do not indicate the quality, knowing the same not to be so gilt and plated as aforesaid; on pain of forfeiting in every such case such buttons, and also 5*l.* for any quantity not exceeding twelve dozen, and if above, after the rate of 1*l.* for every twelve dozen.

36 G. 3. c. 60.

Procuring buttons with false marks.

§ 2. And no person shall print, cast, stamp, or mark, or cause to be so done, upon any part of any metal button, the words *gilt* or *plated*, or any other word, letter, figure, mark, or device, indicating the quality, or on the underside, whether the same do or do not indicate the quality, unless such buttons are before *bonâ fide* plated with silver, or afterwards gilt with gold, or destroyed before sold; and no person shall put or affix upon any such buttons having the words *gilt* or *plated*, or other words, &c. or device as aforesaid indicating the quality on any part thereof, or on the underside; whether the same do or do not indicate the quality, any ornament whatsoever, unless those parts not covered thereby be *bonâ fide* plated or gilt before such ornament be put or affixed thereon. And no person shall put or pack, or cause to be put or packed for sale, upon any card, paper, or other substance, or sell or expose to sale any metal buttons, not being gilt or plated as aforesaid, if the words *gilt* or *plated*, or any other word, &c. or device as aforesaid indicating the quality, be printed, &c. or marked thereon, or upon such card, (not being the pattern card,) paper, or other substance; or on the underside of such buttons, whether the same do or do not indicate the quality, knowing the same not to be so gilt or plated; on pain of forfeiting in every such case such buttons, and also 5*l.* for any quantity exceeding one dozen, and not exceeding twelve dozen; and if above twelve dozen, after the rate of 1*l.* for every twelve dozen.

No marks to be used but such as express the real quality

Nor any buttons to be packed with false marks.

Knowing the same, &c.] A conviction upon this clause, charging that the defendants did the act "unlawfully and fraudulently, contrary to the form of the statute," is bad, without expressly charging that they did it "knowingly;" and such defect is not cured by a proviso in the statute, that no conviction for any offence in the act should be set aside for want of form, or through the mistake of any fact, circumstance, or otherwise, provided the *material* facts alleged were proved; for this in effect requires all material facts to be alleged, and knowledge is a material fact to constitute such an offence. *R.* v. *Jukes,* 8 *T. R.* 536.

§ 3. And no person shall print, &c. or mark, or cause so to be done in or upon any metal button, any word, letter, figure, mark, or device indicating the quality thereof, except the words *gilt* or *plated;* or shall pack or cause to be packed for sale in or upon any card (except the pattern card), paper, or other substance, or parcel; or offer or expose to sale, or cause to be sold or exposed

No other than the words *gilt* or *plated* to be used.

36 G.3. c.60.

to sale, any metal buttons, having any word, &c. or device indicating the qualtity thereof, other than the words *gilt* or *plated* printed, &c. or marked thereon; on pain of forfeiting such buttons, together with *5l.* for any quantity exceeding one dozen, and not exceeding twelve dozen; and if exceeding twelve dozen, after the rate of 1*l.* for every twelve dozen.

Except the words *double* and *treble* gilt.

§ 4. Provided, that nothing herein shall extend to inflict any fine, penalty, or punishment upon any person, who shall print, &c. or mark, or cause to be printed, &c. the words *double gilt* in or upon any metal buttons, or put, place, or pack for sale, in or upon any card (except the pattern card), paper, or other parcel; or expose to sale any such buttons, having the words *double gilt* thereon; provided continually from the time of gilding thereof gold shall remain put and equally spread upon the upper surface of the said buttons, exclusive of the edges, in the proportion of ten grains to such quantity of the said buttons, the upper surfaces of which, exclusive of the edges, shall be equal to the superficies of a circle twelve inches in diameter; or who shall print, &c. the words *treble gilt* in or upon any metal buttons, or put upon any card, &c. or expose to sale any metal buttons having the words *treble gilt* thereon, having 15 grains to the like quantity of buttons as aforesaid; on the like superficies as aforesaid; any thing hereinbefore said to the contrary notwithstanding.

Except the pattern card.] The defendant was convicted upon the above statute, for unlawfully and fraudulently placing for sale upon certain cards and papers divers dozens of metal buttons, marked with the words *double gilt* and *treble gilt*, the same not being so gilt within the meaning of the statute; but the conviction did not negative the exception introduced in the clause, that the buttons had not been exposed to sale in this instance *upon the pattern cards;* wherefore the court quashed the conviction. *R.* v. *Jukes*, 8 *T. R.* 542.

Penalty on making false bills of parcels, &c.

§ 5. And if any person shall make out, send, or deliver, for, with, or in relation to, any metal buttons, any list, bill of parcels, or invoice expressing therein any other than the real quality of such buttons, knowing the same; he shall forfeit 20*l.*

Penalty on mixing buttons of different qualities.

§ 6. No persons shall knowingly intermix, or cause to be intermixed, any metal button or buttons that shall not be *bonâ fide* gilt or plated, upon any card (except pattern cards), paper, or other substance, whereon or wherein any metal button or buttons so gilt or plated shall be put, nor intermix the same in any other manner; on pain of forfeiting such buttons; and also *5l.* for any quantity exceeding one dozen, and not exceeding twelve dozen; if exceeding twelve dozen, 1*l.* for every twelve dozen.

What shall be deemed gilt and plated buttons.

§ 7. And for the better ascertaining what shall be deemed a gilt or plated button, no metal buttons shall be deemed gilt buttons unless continually, from the time of gilding thereof, gold shall remain equally spread upon the upper surface thereof, exclusive of the edges, in the proportion of five grains to a superficies of a circle twelve inches in diameter; and no metal buttons shall be deemed to be plated, unless the superficies of the upper surface thereof be made of a plate of silver fixed upon copper, or a mixture thereof with other metals, previous to the same being rolled into sheets or fillets.

§ 8. 14, 15, & 16. One justice, where the offence is committed or the offender resides, may, by warrant, cause such metal buttons as shall be liable to forfeiture under this act to be seized, and to keep them in safe custody, for the purpose of producing the same in evidence upon any prosecution or action, and when no further necessary, such justices shall order such buttons to be destroyed. And two justices where any offender shall reside, or where any offence shall be committed, may hear and determine the same, who, on information or complaint, within three calendar months, shall summon the party accused, and witnesses on each side, and examine into the facts, and on proof either by confession, or oath of one witness, shall give judgment for the pecuniary penalty with costs, to be allowed by such justices, and shall levy the same by distress, and cause sale thereof, if not redeemed within five days inclusive of the day of seizure; half to the informer or person suing, and half to the poor, and for want of sufficient distress, shall commit such offender to gaol where the information shall be laid, for any time not exceeding three calendar months, unless such penalty and costs be sooner paid.

36 G. 3. c. 60. Recovery and application of penalties.

§ 9. If any person shall think himself aggrieved by the judgment of such justices, he may (on giving security with sufficient surety to the amount of such penalty and costs, together with such further costs as shall be awarded in case such judgment be affirmed,) appeal to the next sessions where such conviction shall be made, who may summon and examine witnesses, and hear and finally determine the same, and award costs as they shall think reasonable.

Appeal.

§ 10. Provided that the said justices, and also such sessions, may mitigate any such penalty, so as not to reduce the same below one half; or where such penalties shall be less than 40*l.* below 20*l.*

Mitigation.

§ 11, & 12. And the conviction may be in the following form (*mutatis mutandis*), as the case may be, which shall be effectual without stating the case, or the facts, or the evidence in any particular manner.

Conviction.

BE it remembered, that on the ——— day of ———, in the year of our Lord ———, at ———, in the county of ———, A. I. *came before us* J. P. *and* K. P., *two of his majesty's justices of the peace for the said county,* [*city*, or *place*, as the case may be,] *and informed us that* A. O. *of ———, on the ——— day of ——— now last past, at ———, in the said county* [*city*, or *place*, as the case may be,] [here set forth the fact for which the information is laid]: *Whereupon the said* A. O., *after being duly summoned to answer the said charge, appeared before us on the ——— day of ———, at ———, in the said county* [*city*, or *place;*] *and having heard the charge contained in the said information, declared he was not guilty of the said offence* [or, as the case may be, *did not appear before us pursuant to the said summons*]; [or, *did neglect and refuse to make any defence against the said charge;*] *but the same being fully proved before us upon the oath of* A. W., *a credible witness,* [or, as the case may be,] *acknowledged and voluntarily confessed the same to be true; and it manifestly appeared to us that the said* A. O. *is guilty of the offence charged upon him in the said information; we do therefore hereby convict him of the offence aforesaid, and do declare and adjudge that he the*

36 G. 3. c. 60.

said A. O. *hath forfeited the said buttons together with the sum of* ——— *of lawful money of* Great Britain, *for the offence aforesaid, to be distributed as the law directs, according to the form of the statute in that case made and provided. Given under our hands and seals the* ——— *day of* ———.

And no such conviction shall be set aside for want of form, or through the mistake of any fact, circumstance, or other matter whatsoever, provided the material facts alleged in the conviction be proved to the satisfaction of the said court.

Witnesses not appearing.

§ 13. Witnesses not appearing, having been duly summoned, without reasonable excuse, to be allowed by such justices, or refusing to be examined on oath, shall forfeit 5*l.*

Inhabitants may be witnesses.

§ 17. Any person may be a witness notwithstanding his being an inhabitant of the parish or place where the offence shall be committed.

Offenders discovering by whom employed, indemnified.

§ 18. And if any person liable to any of the penalties aforesaid shall, before information against him, discover to two justices the person by whose order he did the act which subjected him to such penalty, so as such person be convicted thereof, he shall not be liable to the penalty, but shall be entitled to a moiety of the penalty as other informers.

Manufacturers not liable to penalties in certain cases.

§ 19. Provided also, that if any maker of buttons, who shall have ordered any metal buttons to be gilt, shall before the burnishing thereof appear before two justices, and prove by one witness that he ordered the said buttons to be gilt in the manner required by this act, and delivered gold sufficient for that purpose, or paid or contracted to pay a proper sum in that behalf, and shall afterwards prosecute such gilder or other person to conviction, he shall not be liable to any fine, forfeiture, penalty, or punishment, on account of the said buttons not being gilt with gold; any thing herein contained to the contrary notwithstanding.

Buttons to which this act shall not extend.

§ 20. Provided also, that this act shall not extend to buttons made of gold, silver, tin, pewter, lead, or mixtures of tin and lead, or iron tinned, or of *Bath* or *white metal*, or any of these metals inlaid with steel, or buttons plated upon shells.

§ 15. No information shall be exhibited, or action brought, unless within three calendar months after the offence committed.

§ 21. Every suit or action commenced against any person for what he may do in pursuance of this act shall be commenced within six calendar months,

A.

A. Information on 7 *G.* 1. *stat.* 1. *c.* 12. for wearing Buttons bound with Cloth.

County of ——— to wit. } *BE it remembered, that on the* ——— *day of* ———, *in the year of our Lord* ———, *at the town of* ———, *in the said county,* A. B. *of the town and parish of* ——— *aforesaid, yeoman, in his proper person cometh before me, J. P. esquire, one of his majesty's justices of the peace in and for the said county, and being first duly sworn before me, the said justice, upon his corporal oath, as well for himself as for the poor of the said parish of* ———, *giveth me, the said justice, to understand and be informed, that* A. O. *of the parish of* ———

aforesaid, in the county aforesaid, gentleman, within one month now last past, to wit; *on the ——— day of ———, at the parish of ——— aforesaid, in the county aforesaid, one dozen of coat buttons bound with cloth, then and there unlawfully and against the form of the statute did use and wear,* [or, as the case may be,] *whereby the said* A. O. *for his offence aforesaid, hath forfeited the sum of forty shillings of lawful money of* Great Britain; *and the said* A. B. *prayeth the judgment of me, the said justice, in the premises, and that the said* A. O. *may be summoned to appear before me, the said justice, to answer the same, and that such proceedings may thereupon be had as the statute in this behalf made and provided doth direct.* (Signed) A. B.

Exhibited before me, on the oath of the said A. B. the informant, the day and year first above written.

J. P.

Buying of Titles.

§ I. *By the Common Law.*

II. *By Statute.*

[13 Ed. 1. c. 49. — 32 H. 8. c. 9. — 31 El. c. 5.]

I. By the Common Law.

IT seemeth to be a high offence at common law to buy or sell any doubtful title to lands known to be disputed, to the intent that the buyer may carry on the suit, which the seller doth not think it worth his while to do, and on that consideration sells his pretensions at an under rate: and it seemeth not to be material whether the title so sold be a good or bad one, or whether the seller were in possession or not, unless his possession were lawful and uncontested; for all practices of this kind are by all means to be discountenanced, as manifestly tending to oppression, by giving opportunities to great men to purchase the disputed titles of others, to the great grievance of the adverse parties, who may often be unable or discouraged to defend their titles against such powerful persons, which perhaps they might safely enough maintain against their proper adversary. 1 *Haw. c.* 86. § 1.

II. By Statute.

By stat. 13 *Ed.* 1. *c.* 49. *No person of the king's house shall buy any title whilst the thing is in dispute; on pain of both the buyer and seller being punished at the king's pleasure.* 13 Ed. 1. c. 49.

And by stat. 32 *H.* 8. *c.* 9. § 2. 6. *None shall buy any pretenced right in any land, unless the seller hath been in possession of the same, or of the reversion or remainder thereof, or taken the rents and profits thereof, for one year next before; on pain that the seller shall* 32 H. 8. c. 9.

32 H. 8. c. 9. *forfeit the land, and the buyer the value, half to the king, and half to him that shall sue within one year.*

Pretenced title.] But he who is in lawful possession may purchase the pretended title of any others.

One year before.] But no conveyance made by one who hath the uncontested possession, and undisputed absolute propriety of lands, is in any way within the meaning of this statute. 1 *Haw. c.* 86. § 15.

31 El. c. 5. By stat. 31 *El. c.* 5. § 4. *The offence of buying of titles may be laid in any county at the pleasure of the informer.*

For other matters relating to buying of titles, see **Maintenance.**

Cabbages; Stealing: The same penalty as for stealing turnips. For which, see the title **Turnips.**

Cables. See **Cordage for Shipping.**

Calico. See **Excise.**

Cambrics. See **Linen.**

Candles. See **Excise.**

Capias. See **Process.**

Cards and Dice.

[9 Ann. c. 23. — 10 Ann. c. 19. — 6 G. 1. c. 21. — 29 G. 2. c. 13. — 5 G. 3. c. 46. — 12 G. 3. c. 48. — 16 G. 3. c. 34. — 41 G. 3. (U. K.) c. 86. — 43 G. 3. c. 68. — 44 G. 3. c. 98.]

Importation. BY stat. 43 *G.* 3. *c.* 68. on every dozen packs of playing cards *imported*, a duty of 2*l.* 8*s.* is imposed.

On playing cards and dice made in *Great Britain*.

Duties. 44 G. 3. c. 98. Sch. B. By stat. 44 *G.* 3. *c.* 98. former duties are repealed, and the under-mentioned new duties imposed upon cards and dice, *viz.*

	£.	s.	d.
Playing cards, for every pack which shall be made fit for sale or use in *Great Britain* - - -	0	2	6
Dice, for every pair which shall be made fit for sale or use in *Great Britain* - - - - - -	1	0	0

The said duties to be under the management of the commissioners of the stamp duties.

6 G. 1. c. 21. Power of the justices. The statutes upon this subject (given above) are numerous, but the only one which gives jurisdiction to justices of the peace to act appears to be stat. 6 G. 1. *c.* 21. § 59. which enacts, that if the commissioners be informed, or have cause to suspect, that any person makes cards or dice in a place not entered, on affidavit thereof by the informer before a justice of the peace declaring the grounds of his suspicion, the officer may, in the daytime, and in the pre-

sence of a constable or other lawful officer of the peace by warrant of such justice break open the door, or any part of such private place, and enter and seize all such cards, dice, tools, or materials, and if not replevied in five days by the true owner, they shall be forfeited and sold, one moiety to be to the king, the other to the party discovering. 6 G.1. c.21.

Carriers.

[3 C. c. 1. — 3 W. c. 12. — 21 G. 2. c. 28. — 7 G. 3. c. 40. — 13 G. 3. c. 78.]

Carrier, who.

ALL persons carrying goods for hire, as masters and owners of ships, lightermen, stage-coachmen, and the like, come under the denomination of common carriers, and are chargeable, on the general custom of the realm, for their faults or miscarriages. 1 *Bac. Abr.* 553.

3 W. c.12. Rates for carriages.

By stat. 3 *W. c.* 12. § 24. The justices in *Easter* sessions yearly shall assess and rate the prices of all land-carriage of goods to be brought *into* any place within their jurisdiction by any common waggoner or carrier; and shall certify the rates so made to the mayors and other chief officers of the several market towns within their jurisdiction, to be hung up in some public place to which all persons may resort: and no such common waggoner or carrier shall take for carriage above the rates so set, on pain of 5*l.* by distress, by warrant of two justices where such waggoner or carrier shall reside, to the use of the party grieved.

21 G.2. c.28.

By stat. 21 *G.* 2. *c.* 28. § 3. If any common waggoner or carrier shall demand and take any greater price for bringing goods *to London*, or to any place within the bills of mortality, than is allowed and settled by the justices for the place from whence the same are brought for the carrying of goods *from London* to the said place; he shall forfeit 5*l.* to the party grieved, to be recovered as by the said act of the 3 *W.*, or by distress and sale of his goods by warrant from two justices of *Middlesex*, *Surrey*, *London*, or *Westminster*.

§ 3. And the clerk of the peace in the county shall, immediately after *Easter* sessions yearly, certify to the lord mayor of *London*, and to the respective clerks of the peace for *Middlesex*, *Surrey*, and *Westminster*, the rates and assessments made for the carriage of goods, in their respective counties and places; which certificate, or an attested copy thereof, signed by the officer to whom the same shall be so transmitted, shall be sufficient evidence of the prices so set.

[*Note.* — This act of the 21 *G.* 2. *c.* 28. stands repealed by stat. 7 *G.* 3. *c.* 40. except so much thereof as relates to the rate or price for carriage of goods; and the 7 *G.* 3. *c.* 40. (except so much as repeals the several acts within mentioned) is repealed by stat. 13 *G.* 3. *c.* 78. § 83.]

13 G.3. c.78.

By stat. 13 *G.* 3. *c.* 78. § 59. The owner of every waggon, wain, or cart, shall cause to be painted on some conspicuous part thereof

13 G.3. c.78. His name, &c. to be put on his carriage.

his christian and surname and place of abode in large legible letters, and continue the same thereupon; and the owner of every common stage-waggon, or cart, employed as travelling stages from town to town, shall, besides, paint COMMON STAGE WAGGON or CART, (as the case may be,) on pain of forfeiting not exceeding *5l.* nor less than *20s.* See Highways, Vol. II. § VIII.

Refusing to carry goods.

A carrier shall not evade the law by refusing to carry goods at the prices limited. For if a common carrier, who is offered his hire, and who hath convenience, refuse to carry goods, he is liable to an action in the same manner as an innkeeper who refuses to entertain a guest, or a smith who refuses to shoe a horse. 1 *Bac. Abr.* 554. *Jackson* v. *Rogers*, 2 *Show.* 327.

There is nothing unreasonable in a carrier requiring a greater sum, when he carries goods of greater value, for he is to be paid not only for his labour in carrying, but for the risk which he runs, which is greater in proportion to the value of the goods. I would not, however, have it understood that carriers are at liberty by law to charge whatever they please: a carrier is liable by law to carry every thing which is brought to him, for a reasonable sum to be paid for the same carriage; and not to extort what he will. *Per Lawrence* J. *Harris* v. *Packwood*, 3 *Taunt.* 272.

So an action will lie against a common ferryman, who refuseth to carry passengers. 1 *Bac. Abr.* 554.

In an action by the consignor of goods against a common carrier for non-delivery, where the plaintiff averred that the defendant undertook to deliver, &c. in consideration of the hire to be paid by the plaintiff, proof that the hire was to be paid by the consignee was held to be no variance, the consignor being by law liable. *Moore* v. *Wilson*, 1 *T. R.* 659.

But if the porter put up the box of a passenger behind a stage-coach, and the master, as soon as he knows of it, say, he is already full, and refuse to take the charge of it, the master shall not be liable; for this is the same with an host who refuseth his guest, his house being full, and yet the party says he will shift, or the like; if he be robbed, the host is discharged. 1 *Bac. Abr.* 554. 2 *Show.* 128.

Refusing to admit goods into his warehouse.

So a carrier may refuse to admit goods into his warehouse at unseasonable time, or before he is ready to take his journey: but he cannot refuse to do the duty incumbent on him by virtue of his public employment. 1 Ld. *Ray.* 652.

3 C.1. c.1. Carrier travelling on *Sundays*.

By stat. 3 *C.* 1. *c.* 1. No carrier with any horse or horses, nor waggonman, carman, or wainman, with their respective carriages, shall, by themselves or any other, travel on the Lord's day, on pain of *20s.* on conviction in six months, before one justice, (or mayor,) on view or confession, or oath of two witnesses, to be levied by the constable or churchwardens by distress; to the use of the poor, except that the justice may reward the informer with any sum not exceeding a third part. See tit. Lord's Day, Vol. III.

Exparte Middleton, *T.* 1824. 3 *B.* & *C.* 164. The driver of a *van* travelling to and from *London* and *York* is a carrier within the meaning of stat. 3 *C.* 1. *c.* 1., and liable to be stopped and convicted in the penalty of *20s.* for travelling on the Lord's day.

Carrier embezzling goods.

It hath been holden that a carrier embezzling goods, which he has received to carry to a certain place, is not guilty of felony, because there was not a felonious *taking*; but is liable only to a civil action. 1 *Haw.* *c.* 33. § 3. 5.

But it hath been resolved, that if a carrier open a pack, and take out part of the goods, with intent to steal it, he may be guilty of felony; in which case it may be said, not only that such possession of a part distinct from the whole was gained by wrong, and not delivered by the owner, but also that it was obtained basely, fraudulently, and clandestinely, in hopes to prevent its being discovered at all, or fixed upon any one when discovered. 1 *Haw. c.* 33. § 5.

Carrier opening a pack.

Also it seems clear that if a carrier, after he has brought the goods to the place appointed, take them away again secretly, with intent to steal them, he is guilty of felony, because the possession which he received from the owner being determined, his second taking is in all respects the same as if he were a mere stranger, 1 *Haw. c.* 33. § 5.

Carrier stealing goods after brought to the place.

Also it hath been resolved if goods be delivered to a carrier, to be carried to a certain place, and he carries them to another place, and disposeth of them to his own use, that this is felony; because this declareth that his intention originally was not to take the goods upon the agreement and contract of the party, but only with a design of stealing them. *Kel.* 81, 82.

Carrying to another place.

Where goods are delivered to a carrier, and he is robbed of them, he shall be charged and answer for them, by reason of the hire: this was at the common law, before the hundred was answerable over to him; because such robbery might be by consent and combination carried on in such a manner that no proof could be had of it. *Lane* v. *Cotton*, 1 *Salk*. 143. See *Latham and Others* v. *Stanbury and Others*, 3 *Stark. R.* 143. *post.*

Carrier robbed.

And although it may be thought a hard case that a poor carrier who is robbed on the road, without any manner of default in him, should be answerable for all the goods he takes, yet the inconvenience would be far more intolerable, if he were not so, for it would be in his power to combine with robbers, or to pretend a robbery, or some other accident, without a possibility of remedy to the party; and the law will not expose him to so great a temptation, but he must be honest at his peril. *S. C.* 12 *Mod.* 482.

Forward v. *Pittard*, 1 *T.R.* 27. This was a special case reserved for the opinion of the court. The defendant was a common carrier, to whom the plaintiff had delivered a parcel of hops, to be carried by the defendant's waggon. The defendant put them into his warehouse, and during the night a fire broke out in the adjoining house, which communicated to and burned the defendant's warehouse and plaintiff's goods therein, without any actual negligence in the defendant. The fire was not occasioned by lightning. The question before the court was, whether the plaintiff was entitled to recover. — Ld. *Mansfield* C. J. in giving judgment said, A carrier by the nature of the contract obliges himself to use all due care and diligence, and is answerable for any neglect. But there is something more imposed upon him by the custom, that is, by the common law. *A common carrier is in the nature of an insurer:* all the cases show him to be so. This makes him liable to every thing except the act of God, and the king's enemies, that is, even for inevitable accidents, with those exceptions. The question then is, *What is the act of God?* I consider it to be laid down in opposition to the act of *man;* such as lightnings, storms, tempests, and the like, which could not hap-

In what cases carriers are accountable in case of fire.

pen by any human intervention. To prevent litigation and collusion, the law presumes negligence except in these circumstances. An armed force, though ever so great and irresistible, does not excuse; the reason is, for fear it may give room for collusion, which can never happen with respect to the act of God. We all, therefore, are of opinion, that there should be judgment for the plaintiff.

But in a case where a common carrier between *A.* and *B.* (employed to carry goods from *A.* to *B.* to be forwarded to *C.*) carried them to *B.*, then put them in his warehouse, in which they were destroyed by accidental fire, the carrier was held to be not liable for the loss. Ld. *Kenyon* C. J. said, If the defendants were considered merely as warehousemen, there would be no pretence to say that they were liable for such an accident as the present. The case of a carrier stands by itself upon peculiar grounds; he is held responsible as an insurer; and the reason given in the books (whether well or ill founded is immaterial here) is to prevent fraud. But I do not see how we can couple the character of the carrier with that of the warehouseman, in which last the defendants are not liable here, they not having been guilty of laches. — *Buller* J. The keeping of goods in the warehouse is not for the convenience of the carrier, but of the owner of the goods; for when the voyage to *B.* is performed, it is the interest of the carrier to get rid of them directly; and it was only because there was no person ready at *B.* to receive these goods that the defendants were obliged to keep them. *Garside* v. *Proprietors of the Trent and Mersey Navigation*, 4 *T. R.* 581.

Common carriers, however, from *A.* to *B.*, who charge and receive for cartage of goods to the consignee's house at *B.* for a warehouse there where they usually unload, but which does not belong to them, must answer for the goods if destroyed in the warehouse by accidental fire, though they allow all the profits of the carriage to another person, and that circumstance be known to the consignee; for the carrier is bound to deliver the goods to the person to whom they are directed, and the person who actually delivers them acts as the servant of the carrier; therefore, whether there be the innkeeper or porter, or the porter only, the carrier is liable in all cases where the goods are lost, after they get into the hands of the innkeeper or porter, because they are delivered to those persons with the consent and as the servants of the carrier. *Hyde* v. *Proprietors of the Trent and Mersey Navigation*, 5 *T. R.* 389.

Losing or damaging goods.

And generally if a man deliver goods to a common carrier, to carry to a certain place; if he lose or damage them, an action upon the case lies against him: for by the custom of the realm he ought to carry them safely. And if he be a common carrier, though there be no agreement, or rate settled, or promise of payment, yet he shall recover his hire on a *quantum meruit*, and therefore shall be liable for loss and damages. 1 *Bac. Abr.* 554.

Also if a person, who is no common carrier, take upon himself to carry my goods, though I promise him no reward, yet if my goods are lost or damaged by his default, I shall have an action against him: for the very taking of the goods is a general consideration, though he be not a common carrier; and the acceptance of the goods makes him liable. *Per Holt* C. J. 1 *Show.* 104. 1 *Bac. Abr.* 553.

So if *A.* sends goods by *B.*, who says, "I will warrant they shall go safe," *B.* is liable for any damage sustained by the goods, notwithstanding *A.* sent his own servant in *B.*'s cart to look after them; for though *B.* is not a common carrier by trade, he has put himself into the situation of a common carrier by his particular warranty. *Robinson* v. *Dunmore*, 2 *Bos. & Pull.* 416. 419.

Who shall have action for goods lost.

This question must be governed by the consideration, in whom the legal right is vested, for he is the person who has sustained the loss, if any, by the negligence of the carrier; and whoever has sustained the loss is the proper party to call for compensation from the person by whom he has been injured. *Per* Ld. *Kenyon* C. J. *Dawes* v. *Peck*, 8 *T. R.* 332.

Respecting inland dealers in *England*, if goods are delivered to a carrier or hoyman to be delivered to *A.*, and the goods are lost by the carrier or hoyman, the consignee only can bring the action, which shows the property to be in him, and it is the same where goods are delivered to a master of a vessel. *Per* Ld. *Hardwicke*, *Suce* v. *Prescott*, 1 *Atk.* 248.

In truth, generally speaking, the carrier knows nothing of the consignor, but only of the person for whom the goods are directed, and to whom he looks for the price of the carriage upon delivery. *Per Lawrence J.*, *Dawes* v. *Peck*, 8 *T. R.* 334. *Bull. N. P.* 36.

So *à fortiori*, where the consignor of goods had delivered them to a particular carrier by order of the consignee, and they were afterwards lost, it was held that the consignor could not maintain an action against the carrier for the loss, although he paid for booking the goods, and that the action could be brought by the consignee only. *S. C.*

But upon the grounds of a special agreement between the parties, that the consignor was to pay for the carriage of the goods, the action may be maintainable by the consignor. *Per Le Blanc* J. *S. C.*

This distinction, which was furnished by the cases of *Davis* v. *Wilson*, 5 *Burr.* 2680., and *Moore* v. *Wilson*, 1 *T. R.* 659., and relied on at the bar in *Dawes* v. *Peck*, was fully adopted by Ld. *Kenyon* C. J. who observed, that in the one case the action brought by the consignor against the carrier was sustained, because the consignor was to be answerable for the price of the carriage; he stood therefore in the character of an insurer to the consignee for the safe arrival of the goods, and the subsequent case of *Moore* v. *Wilson* proceeded on the same ground.

The moment goods are delivered to a carrier, the property is vested in the *consignee*, and it makes no difference that the carrier is to be paid by the vendor. By paying the carrier, the *vendor* does not become the insurer of the goods while in the carrier's hands. *So ruled per Lawrence* J. *King* v. *Meredith*, *Gloucester Lent Ass.* 1811. 2 *Campb.* 639.

A delivery to the carrier's servant is a delivery to the carrier.

Goods delivered to the carrier's servant.

At *Bury* assizes, 1732, in the case of *Harvey* against *Syliard* and his wife, the plaintiff brought his action against *Syliard* and his wife for a box with 80*l.* in it, which was delivered to her as book-keeper for her brother, who was a carrier, in order to be sent by the waggon to *London*; which 80*l.* was afterwards lost: it was adjudged that the action would not lie against her, but it ought to have been brought against the brother himself; and the plaintiff was nonsuited. 2 *Barnard.* 234.

A man delivered a box to a carrier to carry, who asked what was in it, and the man told him a book and tobacco (as the case was), and in truth there was 100*l.* besides; the carrier was robbed: *Rolle* C. J. at *nisi prius* ruled that the carrier should answer for the money; for the other was not bound to tell him all the particulars in the box, and it was the business of the carrier to have made a special acceptance. [But the Chief Justice told the jury that they might consider of the intended cheat in the quantum of damages. 1 *Bac. Abr.* 556.]

It is true that if the carrier accept *generally*, he is liable, be the value what it may. 1 *Vent.* 238.

But he may accept *conditionally*, as provided there be no money, or it do not exceed a certain amount; or in case of such excess, he may refuse to accept without an additional premium; and if there be proof that the bailor was apprised of such intention, though there be no personal communication, the carrier shall be considered as a special acceptor. 1 *Stra.* 145.

And the bailor, thus knowing the conditions, but concealing the real value, is guilty of a fraud and imposition; and therefore he shall not only (where there hath been an express declaration on the part of the carrier that he will not be answerable beyond a certain amount without notice) not recover to that amount, but shall not even recover back the money he may have paid for the carriage. *Clay* v. *Willan,* 1 *H. Blac.* 298.

So if a person, being a common carrier, receive by his book-keeper from another man's servant two bags of money sealed up, containing (as he was told) 200*l.* and the book-keeper give a receipt for his master to this effect, "Received of such a one two bags of money sealed up, said to contain 200*l.* which I promise to deliver on such a day at such a place unto such a person, he to pay 10*s.* *per cent.* for carriage and risk;" though the bags contain 400*l.* and the carrier is robbed, he shall be answerable only for 200*l.*; for this is a particular undertaking: and as it is by reason of the reward that the carrier is liable, when the plaintiff endeavours to defraud him of it, it is but reasonable he should be barred of the remedy, which is only founded on the reward. 1 *Bac Abr.* 556. *Bull. N.P.* 71.

Passengers' goods delivered to stage coachmen.

A man took a place in a stage-coach, and in the journey the defendant by negligence lost the plaintiff's trunk; upon not guilty pleaded, the evidence was, that the plaintiff gave the trunk to the man that drove the coach, who promised to take care of it, but lost it: *Holt* C. J. held that the master was not chargeable, and that a stage-coachman is not within the custom as a carrier is, unless the master make a distinct price for the carriage of the goods as well as of the persons. *Middleton* v. *Fowler et al.* 1 *Salk.* 282.

For though all persons carrying goods for hire come under the denomination of common carriers; yet if the driver of a stage-coach which only carries passengers for hire lose the goods of his passengers, the master is not liable; for no master is chargeable with the act of his servant, but when he acts in execution of the authority given him by his master, and then the act of the servant is the act of the master, and in such case the action may be brought against either the master or the servant; and as the action may be brought against either, so either may bring *assumpsit* for the money for the carriage. *Bull. N.P.* 70.

But the master is liable for the loss of a parcel delivered to the driver who was in the habit of receiving parcels, unless it can be shewn that he did so generally for hire, and *on his own account*, otherwise, the inference is that he did it for the benefit of his master. *Williams* v. *Cranston*, 2 *Stark. N.P.* 82.

It has been determined that if a man travel in a stage coach, and take his portmanteau with him, though he has an eye upon the portmanteau, yet the carrier is not absolved from his responsibility, but will be liable if the portmanteau be lost. *Per Chambre* J., 2 *Bos. & Pull.* 419.

Gibbon v. *Paynton*, *Bull. N.P.* 71: 4 *Burr.* 2298. An action was brought against the proprietors of a stage-coach, for not safely carrying 100*l.* delivered to their book-keeper in a bag, from *B.* to *L.* and on the trial it appeared that the money was put into a bag, and carried by the plaintiff's servant to the defendant's house, and there delivered to their book-keeper, who asked no questions about the contents of the bag, but took it as a common parcel, and was paid for it as such by the servant, who gave him no information about it; the money was lost; and the servant, on his cross examination on the trial, swore that he received no particular instructions from his master about the carriage, but only to deliver the parcel to the book-keeper, and pay what was demanded of him for the carriage; the defendants proved that an advertisement had been put into the country newspaper once every month for two years together, concerning the carriage of parcels by this stage-coach, with an N. B. at the bottom of it, that the proprietors would not be answerable for any money, plate, jewels, writings or other valuable goods, unless they were entered as such, and paid for accordingly; and that this paper was taken in at the house where the plaintiff lodged, who was frequently seen with it in his hand, and appeared to be reading it: the court of K. B. held that the defendants were not liable to answer for this money: for a carrier is only liable in respect of the reward, which he receives: and in the present case there was a clear fraud committed by the plaintiffs. And *per Yates* J., here is a full proof of a special acceptance, and a deceit on the part of the plaintiffs: for it is not necessary that there should be a personal communication in order to make a special acceptance. The reason of a personal communication is that each party may know the other's mind; and, therefore, if they know each other's mind in any other manner, that is sufficient.

And moreover in the case of *Clay* v. *Willan* and others, 1 *H. Blac.* 298. The defendants, who were proprietors of a stage-coach, gave notice, "that cash, plate, jewels, writings, or any such kind of valuable articles, would not be accounted for, if lost, of more than 5*l.* value, unless entered as such, and 1*d.* insurance paid for each pound value when delivered." The plaintiff sent a parcel, consisting of light guineas, to go by the defendant's coach; but the person who was employed by the plantiff to deliver the parcel, although acquainted with the terms on which the defendants carried valuables, paid 2*s.* only for the parcel, and 2*d.* for the booking. For the plaintiff, it was contended that he was entitled to recover as far as 5*l.* by the printed conditions, — but the court declared that the sense of the printed conditions seemed to

be, that the defendants were not liable to *any* extent, unless the parcel had been entered and paid for as valuable.

In a case somewhat similar, the notice put up in the office of the defendants was, "Take notice, that *no more than 5l. will be accounted for*, for any goods or parcels delivered at this office, unless entered as such and paid for accordingly." The goods lost were admitted to be above the value of 5*l.* and had not been entered as such, or paid for accordingly. There was a special verdict taken for the plaintiff upon a question of pleading, and in giving their judgment upon that, the court also held that where there was such a notice as the present, the plaintiff might recover to the value of 5*l.* *Clarke* v. *Gray and others*, 6 *East*, 564.

But a notice by carriers that they will not be answerable for any goods above the value of 5*l.* unless the value be declared and a premium paid above the common carriage, does not apply to goods which from their bulk and appearance *must* be known to exceed the specified value, *e. g.* a cask of brandy. *Beck* v. *Evans*, 16 *East*, 247.

And in *Levy* v. *Waterhouse*, *Devon. Sum. Ass.* 1814, *Gibbs* C. J. (1 *Selw. N. P.* 388. 1 *Pri. R.* 280.) ruled, that where a party does not enter and pay for his goods as of greater value than 5*l.*, although the carrier may infer from other circumstances that they were of greater value than 5*l.*, still he may take the benefit of the notice; and that mere knowledge that the goods are of greater value than 5*l.* is not sufficient to deprive the carrier of that benefit. In *Beck* v. *Evans*, *supra*, gross negligence and non-feasance were proved on the part of the carrier's servant. And in *Down* v. *Fromont* 4 *Camp.* 40. Ld. *Ellenborough* C. J. ruled, that unless the appearance of the goods *necessarily* indicated that they were above the value of 5*l.*, the carrier might avail himself of his notice. Et vide *Bodenham* v. *Bennett*, 4 *Price*, 31. *post*, p. 550.

In *Birkett* v. *Willan*, 2 *B.* & *A.* 356. the court of K. B. held that a carrier is liable for gross negligence, although the goods are above the value mentioned in his public notice, and although they are not specially entered and insured.

[A] carrier is not [an]swerable for [par]cels of value, [afte]r notice, [whe]re the value [is f]raudulently [con]cealed.

Batson and others v. *Donovan and others*, *M.* 1 *G.* 4. 4 *B.* & *A.* 21. Action against the defendants as common carriers to recover a compensation for the loss of a box, containing bills and bank notes to the value of 4072*l.*, which had been lost out of a stage coach, of which they were the proprietors. The defendants had given notice that they would not be answerable for parcels of value, unless entered and paid for as such. The plaintiffs knew of this notice. The box was left with one of the defendants, at *Berwick*, and booked, with no other observation than this: "It is *the box* for *Newcastle*." Nothing was said as to what it contained, nor did any of the defendants know it contained articles of value. It was directed "*William Batson, Newcastle*," and had on it a brass plate, with the words "*Wm. Batson and Co.*" It was locked and corded, not sealed. *W. Batson* and Co. were bankers at *Berwick* and *Newcastle*. The coach arrived at *Berwick* at twelve at night, and remained half an hour in the *middle* of the street, which is of the width of 80 yards. About a quarter after twelve the box was put into the boot of the coach, and a porter was ordered to watch the coach; but he was at a considerable distance from it, and was so inattentive to his duty that the box

was probably stolen from the boot whilst it was so left in the street and so watched by the porter. There was no *misfeasance* in the defendants or any of their servants. *Bayley* J., who tried the cause (at *Northumberland* Sum. Ass. 1819,) left two questions to the jury: 1st. Whether the plaintiffs dealt fairly by defendants in not apprizing them that the box contained articles of value; and, 2dly, Whether in the case of a parcel of such value as the defendants might fairly expect this to be, there was in the conduct of the defendants gross negligence? The learned judge told the jury, that if they thought the concealment on the part of the plaintiffs was unfair, or that the defendants were not guilty of gross negligence, they should find for the defendants. The jury found for the defendants. A *rule nisi* having been obtained for a new trial, the court of K. B. (*Best* J. dissentiente) held that the direction to the jury was correct, and therefore refused to disturb the verdict. (*a*)

Latham and others v. *Stanbury and others*, 3 *Stark. R.* 143. 1822. *Cor. Abbott* C. J. A carrier receives a parcel of notes to be carried from *L.* to *D.* under a contract to deliver them the next day, fire and *robbery* excepted; the parcel having been deposited by one of the defendants in a desk in their office in *L.* is missing, after a short absence of that defendant from his office; this is not a loss within the exception of *robbery* in the contract.

Garnett v. *Willan and Jones*, *M.* 2 *G.* 4. 5 *B.* & *A.* 53. The defendants, who were proprietors of the *Worcester* mail-coach, received a parcel of sarsenet, of the value of 45*l.* 0*s.* 5*d.* which was duly booked at the coach-office at the *Bull and Mouth* inn, from which the *Worcester* mail proceeds, "as for the *Worcester* mail-coach to *Worcester*." The parcel was accordingly, by the defendants, put into the *Worcester* mail-coach at the *Bull and Mouth* inn, and entered in the usual way-bill of that coach, as a parcel to be carried thereby from *London* to *Worcester*, and the same parcel was carried in the mail-coach, from the coach-office at the *Bull and Mouth* inn, to the *Green Man and Still*, in *Oxford-street*, at which the defendants have no office or servant; but where passengers and parcels are booked for the defendant's mail-coach, and there the same was taken out of the mail-choach, and left at the *Green Man and Still*, to be forwarded on the following day to *Worcester* by another *Worcester* coach, called the Heavy Coach, (in which the defendant *John Jones* had no interest,) and the entry in the way-bill of the mail-coach was altered accordingly. The parcel was afterwards lost out of the heavy coach, but it did not appear by what means. Before the parcel was so booked, and delivered to be carried to *Worcester* by the mail, the defendants had caused the following public notice to be given, and the plaintiffs had notice thereof:—"Take notice, that the proprietors of the public carriages, who transact their business at this office, will not be answerable for any package containing cash, bank notes, bills, jewels, plate, watches, lace, silks, or muslins, however small the value, nor for any other package which, with its contents, shall exceed 5*l.* in value, if lost, or damaged, unless the value be specified, and an insurance be paid over and above the

(*a*) The opinions of the learned judges in this case are highly interesting and worthy of attention.

common carriage, when delivered here, or to any of their offices or agents in the different parts of the kingdom."—The court of K. B. held that, notwithstanding this notice, the carriers were responsible for the parcel in question, in consequence of their having delivered it to be carried by another coach, of which one of the carriers only was proprietor.

Sleat and others v. *Fagg*, *H.* 2 *G.* 4. 5 *B.* & *A.* 342. A parcel containing country bank notes of the value of 1300l., and addressed to their clerk, in order that it might not be known to be a banker's parcel, was delivered to the defendant in *Holborn* to be forwarded to *Christ-church* by the *Pool* mail, without any notice of its value. The parcel was sent by a *Southampton* light coach and was lost. The defendant had previously given notice that he would not be answerable for any parcel above 5*l.* in value if lost or damaged, unless an insurance were paid: no insurance having been paid in this case. The court of K. B. held notwithstanding, that the carrier was responsible for the loss. *Bayley* J. said, in *Batson* v. *Donovan* (*ante*, p. 546.), the very ground of action against the carriers was a negligent performance of their duty, and it was held, that the plaintiff in that case could not make that negligence a ground of action, because he had superinduced it by his own neglect, in not communicating the value of the parcel to the defendants. If that had been done, they would probably have placed it in a more secure part of the coach. In that case, the carriers in performance of their contract placed the parcel in the coach, and the foundation of the charge against them was mere negligence in the course of performing their contract. This is a case not merely of negligence, but of misfeazance; for the defendant received the parcel for the purpose of conveying it by the *Pool* mail, of which he was a proprietor. He, however, divests himself of his charge, and sends it by another conveyance, of which all the same persons were not proprietors. The defendant, therefore, did not carry it in pursuance of his contract, but substituted a different carrier, and that being so, this case is governed by the decision of the court in *Garnett* v. *Willan*. (*ante*, p. 547.) If the defendant had sent the parcel by the mail in pursuance of his contract, I should have been of opinion, that, under the circumstances of the case, he would not have been liable for the loss. But having sent it by a different mode of conveyance, I am of opinion that he is liable.

Liability for negligence on delivering a parcel, directed to a known place of residence, to a stranger calling at the carrier's office, notwithstanding a notice limiting responsibility to a certain amount.

Duff and others v. *Budd*, *H.* 2 & 3 *G.* 4. — 3 *Brod.* & *Bing.* 177. A stranger to the plaintiffs requested them to send some goods to Mr. *James Parker*, of *High Street*, *Oxford*, with whom they had never dealt, but finding upon enquiry that among the various persons bearing the name of *Parker*, at *Oxford*, Mr. *Parker*, residing in *High Street*, was well known for his respectability as a tradesman, they forwarded the goods by the defendant's waggon, having directed the parcel to "Mr. *James Parker*, *High Street*, *Oxford*." On the arrival of the parcel at *Oxford*, the defendant's porter, knowing *William Parker* of *High Street*, at whose house he had delivered goods, (it being the course of the defendant's office to deliver parcels at the houses of the consignees) went to this *Parker* and informed him of the circumstance. — *Parker* said he expected no parcel. Shortly afterwards, a person to whom the porter had before delivered parcels directed for Mr. *Parker*, *Oxford*, to be left till called for, came to the defendant's office,

Duff v. Budd.

and seeing the parcel directed as before mentioned, claimed it as his own, and on his paying the carriage, it was delivered to him. The plaintiffs having discovered that they had been imposed upon, wrote to the defendant, desiring, that should the person who had claimed the parcel in question be found, he might be detained as a swindler; and soon afterwards, one of the plaintiffs in a conversation with a servant of the defendant's at his office in *Oxford*, said, if they could produce to him the man who had the parcel, he had done with the defendant. Some further letters passed between them, and attempts were made to detain the swindler, but unsuccessfully. The parcel was worth about 89*l.*, and the defendant had put up a notice in a conspicuous part of his office, limiting his responsibility to 5*l.*, except where articles were entered according to their value; but the plaintiff's porter, who could not read, swore he never saw the notice. *Dallas* C. J. stated to the jury, that there were two questions for their opinion. The first arising upon the notice. The second, whether there had been gross negligence on the part of the defendant. The learned judge observed, that in one view of the case, it might not be necessary for the jury to consider the first question; for that, if notice were given, and there had been gross negligence on the part of the defendant, the defendant was liable; and he directed the jury to consider, whether, under the circumstances, the defendant had been guilty of gross negligence or not, explaining to them, that if the defendant and his servants had not taken the same care of the property as a prudent man would have taken of his own, he had been guilty of gross negligence. — The jury found a verdict for the plaintiffs. On motion for a new trial the court of C. P. held that the case was properly left to the jury, and refused to grant a rule. — *Burrough* J. said, carriers are constantly endeavouring to narrow their responsibility, and to creep out of their duties; and I am not singular in thinking, that their endeavours ought not to be favoured. The question here is, whether there was gross negligence. I think there was; and I am of opinion that the case was properly left to the jury, and that they have given a proper verdict.

Affixing notice not sufficient, when.

In order to render a notice available to a carrier in limiting his responsibility, it is not merely necessary to affix it in his office; the person delivering goods there must be able to read, or could not in fact but have known its purport. *Kerr* v. *Willan*, 2 *Stark. N. P.* 53. *Davis* v. *Willan*, 2 *Stark. N. P.* 279.

Carriers who take up goods at intermediate places, where notices are not affixed, remain subject to the common law liability. *Per Gibbs* C. J., who said the same point had been ruled by Ld. *Kenyon* and Ld. *Ellenborough*. *Gourger* v. *Jolly*, *Sitt. after T.* 56 *G.* 3. 2 *Selw. N. P.* 1310. 1 *Holt.* 317. *S. C.*

Smith v. Horne and others, H. 1818. 2 *Moore*, 18. 8 *Taunt.* 144. *Holt. C. N. P.* 644. *S. C.* A parcel having been sent from *Worcester* to *London*, arrived in *London* and was taken from the coach office of the defendants in a cart, under the direction of *one* person only, for the purpose of delivery, the servant left the cart unprotected in the street, while he went to different houses for the purpose of delivering other packages, and the parcel, the subject of the action, was lost out of the cart. The court of C. P. held, on a motion for a new trial, that the defendants were liable for such loss, as it amounted to gross negligence, and defeated the

usual notice, that they would not be accountable for a loss exceeding *5l.*

Alfred v. *Horne*, 3 *Stark.*, *C. N. P.* 136. 1822. Cor. *Abbott* C. J. A parcel is delivered by the plaintiff's agent at *W.* to defendant, to be carried to plaintiff, who resides in *London;* it is sufficient for the defendant to prove that plaintiff in *London* has received notice that defendant would not be responsible for goods not exceeding *5l.* in value, unless entered and paid for, without proving any notice to the agent in the country, especially if the terms of the notice extend to deliveries to the defendant's agents in the country.

Carriers are, by the custom of the realm, bound to carry parcels with safety and security. *Per Burrough* J., *S. C.* 2 *Moore*, *C. P.* 22. See *Forward* v. *Pittard*, *ante.*

Bodenham v. *Bennett*, *E.* 57, *G.* 3. 4 *Price*, 31. A carrier by his servant had carried the parcel beyond the place of its destination, and it was lost. The court of exchequer, after great consideration, were of opinion, that the carrier was not protected by the terms of the notice, upon the principle, that at the time the loss occurred, the carrier was not carrying it to its place of destination, but, by a wrongful act of his own, had divested himself of the charge of it on its way to the place of destination.

Carrier may indict for goods stolen, as his own property.

Where goods are stolen from the carrier, he may prefer an indictment against the felon, as for his own goods; for though he has not the absolute property, yet he has such a possessory property that he may maintain an action of trespass against any one who takes them from him, and so may indict a thief for taking them; and the indictment will be good also, if it charge that the goods are the property of the real owner. *Kel.* 39.

Persons stealing his own goods from the carrier.

There is a special case, wherein it is said, that a man may commit larceny by stealing his own goods delivered to the carrier, with intent to make him answer for them; for the carrier had a special kind of property in the goods, in respect whereof, if a stranger had stolen them, he might have been indicted generally as having stolen the said carrier's goods; and the injury is altogether as great, and the fraud as base, where they are taken away by the very owner. 1 *Haw. c.* 34. § 30.

A carrier cannot retain goods for a balance due to him upon the *general* account between him and his employer, unless there be a special agreement between them to that purpose. *Rushforth* v. *Hadfield*, 6 *East*, 519.

Lien.

Wright v. *Snell and others*, *H.* 2. *G.* 4. 5 *B.* & *A.* 350. A carrier had given notice that all goods would be subject to a lien, not only for the freight of the particular goods, but also for any general balance due from their respective owners. Goods having been sent by the carrier addressed to the order of J. S., a mere factor, the court of K. B. held, that the carrier had not, as against the real owner, any lien for the balance due from J. S. — *Abbott* C. J. Where goods are consigned to *A. B.* or order, the carrier has a right to consider *A. B.* as the owner of the goods, for the purpose of delivery, but not for the collateral purpose of creating a lien on the goods, as against the owner, in respect of a general balance due from the consignee; nor will any prejudice arise to the carrier from our holding this to be the law, for he need not deliver the goods in any case till the price of the carriage for them is paid. I think, therefore, that in this case the defend-

ants had no lien for the sum of 58*l.* and that the plaintiff is entitled to our judgment.

Carrier may retain goods for his hire.

A carrier may retain the goods for his hire. *Skinner* v. *Upshaw*, 2 *Ld. Ray.* 752.

And even if the goods be stolen goods, yet the right owner shall not have them without paying for the carriage. For the carrier being obliged to receive and carry the goods, the law will not deprive him of the remedy for the reward due for the carriage. 2 Ld. *Raym.* 867. See 1 *Esp* 115. p. 552.

Till the freight on goods is either tendered or paid, or the carrier assents to vendee's taking possession of them, the delivery is not complete, and the consignor is not divested of his right of stoppage in transitu.

Crawshay and others v. *Eades*, *H.* 3 & 4 *G.* 4. 1 *B.* & *C.* 181. On the 26th *January*, 1822, the plaintiffs loaded at *Brentford*, on board two barges belonging to the defendant, 348 bars of iron, and delivered the following ticket "Shipped 348 bars of iron, weight 205 0 20, for Messrs. *Hornblower*, *Brierly Hill*, near *Stourbridge*, from *R.* and *W. Crawshay*, and *Co.*" The iron was sent to *Hornblower* on sale. On the 8th *February* the barges with the iron arrived at *Hornblower*'s works, and on the 9th a part out of each of the barges was landed upon his wharf. The defendant then hearing that *Hornblower* was gone off, reshipped the part that had been landed, and conveyed the whole to his own premises. He afterwards sold part, in order to discharge *Hornblower*'s debt to him, and delivered the residue under an indemnity over to the assignees, under a commission of bankruptcy, which had issued against *Hornblower*. It appeared that *Hornblower* had been in the habit of paying the freight for the iron shipped by himself, as well as for that shipped by the plaintiffs. The defendant having given notice that all goods received by him for carriage would be retained, not only for the particular carriage, but for all arrears, claimed, in the first instance, to retain the iron in question for his general balance.— *Abbott* C. J. was of opinion at the trial, that there was no actual delivery to *Hornblower* of any part of the iron, so as to divest the plaintiff of his right to stop in transitu, and the jury found for the plaintiff for the value of the iron. — On motion for a new trial, *Abbott* C. J. said, There is no case in which a carrier having begun to deliver, and afterwards discontinues, has been held to have made a complete delivery of any part of the goods. — *Bayley* J. There can be no doubt, that wherever there is a complete delivery of part of one entire cargo to the consignee, the transitus is ended, and the consignor cannot stop the remainder. But in this case there was no complete delivery of any part of the iron to *Hornblower*. The goods were in different barges, and a part of the iron was taken out of each barge and landed upon *Hornblower*'s wharf, but he had not taken possession of it, nor was it weighed, so that the amount of the freight due to *Eades* might be ascertained. Now independently of any particular usage, a carrier has, by the common law, a right to insist that the goods shall be weighed in order, first, that it may be ascertained for his own security, that he has delivered the precise quantity entrusted to him: and, secondly, that the amount of the freight, if it depend upon the weight, may be ascertained. When part of the iron was landed upon the wharf, it might more properly be considered as in a course of delivery, than as actually delivered; by placing it upon the wharf, the carrier did not mean to assent to *Hornblower*'s taking it away without paying the freight. Besides, a carrier has a lien on the

entire cargo, for his whole freight, and until the amount is either tendered or paid, the special property which he has in his character of carrier does not pass out of him to the vendee, unless, indeed, he does some act to shew that he assents to the vendee's taking possession of the property before the freight is paid. In order to divest the consignor's right to stop in transitu, there ought to be such a delivery to the consignee as to divest the carrier's lien upon the whole cargo. I am of opinion, that the entire freight not having been tendered or paid, the delivery in this case was not complete as to any part: that the special property remained in the carrier, and that the consignor was not deprived of his right of stoppage *in transitu*. — *Holroyd* and *Best* Js. agreed. — *R. R.*

But if a carrier receive goods to be carried, he cannot retain the goods, and put the consignor of them upon proof of his title. 1 *Esp.* 115.

For forms of proceedings against a carrier travelling on *Sunday*, see Lord's Day, Vol. III.

Carrots.

THE penalty for stealing *carrots* is the same as that for stealing *turnips*, *potatoes*, *cabbages*, *parsnips* and *pease*; which are treated of together under the title Turnips.

Carts. See Highways, Vol. II.

Carts, Taxed. See Taxes, Vol. V.

Casual Death. See Deodand, *post*.

Cattle.

§ I. *Concerning the bringing of Cattle into* England. [5 Ann. c. 8. — 5 G. 3. c. 10. — 16 G. 3. c. 8.]

II. *Buying and selling Cattle.*

III. *Stealing, killing, or maiming Cattle.* [22 & 23 C. 2. c. 7. — 9 G. 1. c. 22. — 14 G. 2. c. 6. — 15 G. 2. c. 34. — 4 G. 4. c. 54.]

IV. *Ill-treatment of Cattle.* [3 G. 4. c. 71.]

V. *Prohibiting the Importation of Hides, Skins, or other parts of Cattle to prevent Infection.* [9 G. 3. c. 39.]

VI. *For slaughtering Horses, and some particular Offences relating to them,* see title Horses.

I. Concerning the bringing of Cattle into England.

BY stat. 5 *G*. 3. *c*. 43. § 11. Bestials may be freely imported from the isle of *Man*.

Cattle of the Isle of Man.

By the sixth article of the union with *Scotland*, no *Scots* cattle carried into *England* shall be liable to any other duties than those to which cattle of *England* are liable.

Scotch cattle. 5 Ann. c. 8.

By stat. 5 *G*. 3. *c*. 10. which was of temporary continuance, but by stat. 16 *G*. 3. *c*. 8. made perpetual, all sorts of cattle may be imported from *Ireland* duty free.

Irish cattle.

II. Buying and Selling of Cattle.

By stats. 3 & 4 *Ed.* 6. *c*. 19. 3 *C*. *c*. 4. § 7, 8. No person shall buy any ox, steer, ront, cow, heifer, or calf, and sell the same again alive in the same market or fair; on pain of forfeiting double value, half to the king, and half to him who shall sue. And the said stat. 3 & 4 *Ed*. 6. *c*. 19. is not repealed by stat. 12 *G*. 3. *c*. 71. which repeals the general forestalling, ingrossing, and regrating act of 5 & 6 *Ed*. 6. *c*. 14. and other subsequent acts enforcing the same; but hath no reference to any preceding act.

None shall buy and sell in the same market.

III. Stealing, killing, or maiming of Cattle.

By stat. 22 & 23 *C*. 2. *c*. 7. § 2, 3, 4. If any person shall *in the night time maliciously*, unlawfully, and willingly kill or *destroy* any horses, sheep, or other cattle, he shall be guilty of felony; but without corruption of blood, or loss of dower: but to avoid judgment of death, or execution thereupon, he may choose to be transported to some of the plantations, to be mentioned in the judgment, for seven years.

22 & 23 C. 2. c. 7. Killing or destroying in the night.

§ 5. And if any person shall *in the night time maliciously*, unlawfully, and willingly *maim, wound, or otherwise hurt*, any horses, sheep, or other cattle, whereby the same shall not be killed or utterly destroyed: he shall forfeit treble damages, by action of trespass, or upon the case.

Maiming, wounding, or hurting, without killing, or utterly destroying in the night.

§ 6. Three justices (1 *Q*.) may inquire by a jury and witnesses; and may issue warrants for summoning jurors, and for apprehending persons suspected, and take their examinations: and cause witnesses to come before them to give information on oath, so as no person to be examined shall be proceeded against for any offence concerning which he is examined as a witness, and shall make a true discovery; and if any person, being summoned as such witness, refuse to appear, they may commit him till he submit to be examined on oath.

§ 7. Offences within this act must be proceeded against within six months after the offence committed.

By stats. 14 *G*. 2. *c*. 6. and 15 *G*. 2. *c*. 34. If any person shall feloniously drive away, or in any other manner feloniously steal (any one or more sheep or other cattle, by stat. 14 *G*. 2. *c*. 6.) any ox, bull, cow, calf, steer, bullock, heifer, sheep, or lamb, or shall wilfully kill any ox, bull, cow, calf, steer, bullock, heifer, sheep, or lamb, with a felonious intent to steal the whole carcase, or any

14 G. 2. c. 6. 15 G. 2. c. 34. Stealing, or killing with intent to steal, cows, sheep, &c.

part thereof; or shall assist or aid in committing any such offence; he shall be guilty of felony without benefit of clergy.

Giving a sheep a mortal wound with intent to steal part of the carcase will by relation be a killing from the time the wound is given, though the animal does not die till after the larceny of part of the carcase is accomplished.

Kill with intent to steal the carcase.] *Thomas Clay* was convicted before *Bayley* J., at *Chelmsford Lent Assizes* 1819, of killing a lamb with intent to steal part of the carcase. It appeared in evidence, that the prisoner cut the leg from the animal whilst it was living, and carried the leg away before the animal died, so that the lamb was not completely killed at the time of the larceny, The learned judge passed sentence upon the prisoner, but a doubt arising whether as the death wound was given before the theft, the offence was made out, his lordship submitted the point to the consideration of the judges, eleven of whom were unanimous, that as the wound, which would necessarily produce death, was given before the larceny, the lamb was to be considered as killed from the time such wound was given, and that the conviction was right. *Thomas's Clay's case, Essex Lent Assizes*, 1819. *MS. C. C. R.*

9 G.1. c.22. Killing or wounding by the Black Act.

And by stat. 9 *G*. 1. *c*. 22., commonly called the Black Act, (which is inserted at large under the title of that name.) If any person shall unlawfully and *maliciously kill, maim, or wound any cattle*, he shall be guilty of felony without benefit of clergy; but without corruption of blood: but see stat. 4 *G*. 4. *c*. 64. *infra*.

There must be malice against the owner.

Maliciously] In these cases the malice must be entertained *against the owner* of the cattle, and not merely against the animal itself. *C. Pearce's case*, 2 *East's P. C.* 1072. 1 *Leach*, 527. *Kean's case, O. B.* 1789. 2 *East's P. C.* 1073. 1 *Leach*, 539. (*n*) *Shepherd's case, O. B. Oct.* 1790. 1 *Leach*, 539. 2 *East's P. C.* 1073. See *Curtis, Bt.* v. *the Hundred of Godley*, 3 *B. & C.* 248.

No indictment lies at common law for unlawfully with force and arms maiming a horse.

An indictment at common law, charged that the prisoner "on 23d of *May*, 33 *G*. 3. with force and arms at, &c. one black gelding of the value of 30*l*. of the goods and chattels of *William Collyer*, then and there being, then and there unlawfully did maim, to the great damage of *Collyer*, and against the peace," &c. But upon reference to the judges after conviction, they all held that the indictment contained no indictable offence; for if the case were not within the black act, the fact in itself was only a trespass; for that the words *vi et armis* did not imply force sufficient to support an indictment. *Daniel Ranger's case, Surrey Summer Assizes* 1798, *cor. Buller* J. 2 *East's P. C.* 1074.

4 G.4. c.54. Persons killing or maiming cattle, and their accessaries to be liable to transportation or imprisonment.

But now by stat. 4 *G*. 4. *c*. 54. § 2. After reciting that whereas by stat. 9 *G*. 1. *c*. 22. it is enacted, that if any person or persons shall unlawfully and maliciously kill, maim, or wound any cattle, or shall forcibly rescue any person being lawfully in custody of any officer or other person for such offence, or shall, by gift or promise of money or other reward, procure any of H. M.'s subjects to join him or them in any such unlawful act, every person so offending being thereof lawfully convicted, shall be adjudged guilty of felony, and shall suffer death as in case of felony without benefit of clergy: and whereas it is expedient that a lesser degree of punishment should be provided for the said offence, and that the same should be extended in the manner thereinafter mentioned, it is enacted, that so much of the said recited act shall be repealed, save only as to offences committed before the passing thereof, and that after the passing of this act, [8th July 1823] if any person shall unlawfully and designedly kill, maim, or wound any cattle, whether from malice conceived against the owner or otherwise, or shall procure, counsel, aid, or abet the

commission of the said offences, or of any of them, or shall forcibly rescue any person lawfully in custody of any officer or other person, for any of the said offences, every person so offending being thereof lawfully convicted, shall be adjudged guilty of felony, and shall be liable at the discretion of the court, to be transported beyond the seas for life, or for such term not less than seven years, as the court shall adjudge, or to be imprisoned only, or to be imprisoned and kept to hard labour in the common-gaol or house of correction, for any term not exceeding seven years.

4 G.4. c.54.

§ 4. Provides and declares, that nothing therein contained shall be construed to alter or affect the remedy given by the said recited act to the party damaged by killing or maiming cattle, against the inhabitants of the hundred, but that the same remedy shall remain in as full and ample manner as before the passing of this act.

Remedy to party injured not taken away.

Maim or wound.] Unless the maim or wound were mortal, it was not felony within the statute of *Car.* 2. 2 *East's P. C.* 1076.

9 G.1. c.22.

But it is otherwise within the black act. — *J. Haywood* was tried on an indictment on the black act, containing two counts; one for maliciously maiming, the other for maliciously wounding a gelding, against the statute, &c. It appeared that the prisoner had maliciously and with an intent to injure the prosecutor, driven a nail into the frog of the horse's foot, which had at the time rendered the horse useless to the owner: but at the trial the prosecutor said that the horse was likely to do well, and to be perfectly sound again in a short time. After conviction, judgment was respited upon a doubt whether as the horse was likely to recover, and as the wound was not a permanent injury, the offence were within the statute? In *Mich.* term 1801, all the judges held the conviction right. The words of the statute 9 *G.* 1. *c.* 22. are "shall unlawfully and maliciously kill, maim, OR *wound* any cattle," &c.; which word "wound" appears to be used as contradistinguished from a permanent injury, such as maiming. *J. Haywood's case, Coventry Summer Assizes,* 1801. *cor. Rooke J. MS. C. C. R.* 2 *East's P. C.* 1076. *S. C.*

Wounding a horse out of malice to the owner by driving a nail into the frog of his hoof, is within 9 G.1. c.22.

Any cattle.] At *Abingdon Summer Assizes,* 1770, *John Paty* was capitally convicted on an indictment for feloniously, unlawfully, knowingly, wilfully, and maliciously shooting at and killing one mare and one colt. It was moved, in arrest of judgment, that the mare and colt are not averred in the indictment to be *cattle* within this statute, and that the word "*cattle,*" doth not by law necessarily include *horses, mares,* and *colts;* that the statutes for regulating the sale of cattle have thought it necessary to mention the several species of beasts to which the provisions of the said acts shall extend; that the book of rates distinguishes between the subsidy on *great cattle* imported, *viz.* 50*s.*, and that on *horses and mares, viz.* 10*l.*; that the stat. 22 *Car.* 2. *c.* 13. distinguishes between the encouragement given for breeding *cattle of all sorts* and that for breeding *horses;* that when the stat. 14 *G.* 2. *c.* 6. made it felony without clergy to steal *sheep* or *other cattle*, it was found necessary to specify by 15 *G.* 2. *c.* 34. what cattle were intended by the former act. Upon these objections the judge respited the sentence, and laid the case before the judges, who unanimously agreed, that as the statute 22 & 23 *Car. c.* 7. had made the offence of killing horses by night a single felony, this

Cattle.

statute was only to be considered as an extension of that statute. And judgment of death was given at the next assizes. After which the prisoner was reprieved for transportation; and afterwards, upon strong applications from the country, he received a free pardon. *Paty's case, Abingdon Summer Assizes*, 1770. *cor. Blackstone J.* 2 *Blac. Rep.* 721. 2 *East's P. C.* 1074.

Joseph Dobbs was indicted for burglary in breaking and entering the stable of *James Bayley*, part of his dwelling-house, in the night, with a felonious intent to kill and destroy a gelding of one A. B. there being. It appeared that the gelding was to have run for 40 guineas, and that the prisoner cut the sinews of his fore-leg to prevent his running, in consequence of which he died. *Parker C. B.* ordered him to be acquitted: for his intention was not to commit the felony by killing and destroying the horse, but a trespass only to prevent his running; and therefore no burglary. But the prisoner was again indicted for killing the horse, and capitally convicted. *Dobbs's case, Buckingham Summer Assizes*, 1770. 2 *East's P. C.* 513. 2 *Russ.* 943. See also an indictment against *Daniel Dawson* in 3 *Chitt. Crim. Law*, 1088. for poisoning a mare in order to prevent her from running the race, the prisoner having betted against her, and upon which indictment he was convicted and executed.

It is plain that the legislature must have intended to include *horses* in the word "*cattle*," when in the stat. of *C.* 2. they speak of "horses, sheep, or *other cattle*:" and by the statute of *G.* 1. they exclude from clergy such as kill, &c. *any cattle;* which latter statute was evidently intended to enlarge and not to restrain the description of the felony; for it extends to such as "maim or wound" any cattle, though not destroyed, which by the prior act was left a misdemeanor at most, punishable only by action to recover treble damages. 2 *East's P. C.* 1076.

Pigs are cattle within the meaning of the black act.

Sarah Chappel was tried before *Thomson B.* at the *Devon Sum. Ass.* 1804., on an indictment, which set forth, that she being an ill-designing and disorderly person, and of a wicked and malicious mind, on the 6th *March*, 44 *G.* 3. with force and arms, at the parish of *Islington*, three pigs, being swine and cattle of the value of 6*l.* of the goods and chattels of *William Osmond* junior, then and there being, feloniously, unlawfully, wilfully and maliciously, with and by means of poison, then and there did kill and destroy against the form of the statute, &c. The prisoner was found guilty; but judgment was respited, and the question, whether pigs are cattle within the meaning of the black act, 9 *G.* 1. *c.* 22., was submitted to all the judges. The following statutes were referred to: 18 *Car.* 2. *c.* 2. § 1.— 20 *Car.* 2. *c.* 7. § 1, 2, 3, 4, 5, and 6. — 22 *Car.* 2. *c.* 13. § 4. 6. and 7. — 22 *Car.* 2. *c.* 19. — 22 & 23 *Car.* 2. *c.* 19. — 3 *W.* & *M.* *c.* 8. 14 *G.* 2. *c.* 6. — 15 *G.* 2. *c.* 34. — 31 *G.* 2. *c.* 40. § 11. The judges confirmed the conviction, and at the ensuing assizes the prisoner received sentence of death, which sentence was afterwards commuted to three months' imprisonment in *Exeter* gaol. *R.* v. *Chapple, Exeter Sum. Ass.* 1804. *MS. C. C. R.*

Three men were committed for trial at *Staffordshire Lent Ass.* 1807, upon a charge of having feloniously shot at and killed two pigs, the property of *James Mason.* — *Lawrence* J., upon reading the depositions, and finding that the injury done to the pigs was

in consequence of their having trespassed upon the prisoners, and not from any malicious motive towards the prosecutor, said there was no pretence for the prosecution, and no bill was preferred. His lordship also observed, that pigs were deemed cattle within the meaning of the Black Act, and referred to the case of *R.* v. *Sarah Chapple*, *R.* v. *Witcherley and Others, MS.*

The hundred shall be answerable for the damages, not exceeding 200*l.*

IV. Ill-treatment of Cattle.

[3 G. 4. c. 71.]

3 G. 4. c. 71.

By stat. 3 G. 4. *c.* 71., intituled "*An act to prevent the cruel and improper treatment of cattle*" (*a*) [passed 22d *July* 1822.] § 1. after reciting that whereas it is expedient to prevent the cruel and improper treatment of horses, mares, geldings, mules, asses, cows, heifers, steers, oxen, sheep, and other cattle: it is enacted, "that if any person or persons shall wantonly and cruelly beat, abuse, or ill-treat any horse, mare, gelding, mule, ass, ox, cow, heifer, steer, sheep, or other cattle, and complaint (A) on oath thereof be made to any justice of the peace or other magistrate within whose jurisdiction such offence shall be committed, it shall be lawful for such justice of the peace or other magistrate to issue his summons or warrant, (B) at his discretion, to bring the party or parties so complained of before him, or any other justice of the peace or other magistrate of the county, city, or place within which such justice of the peace or other magistrate has jurisdiction, who shall examine upon oath any witness or witnesses who shall appear or be produced to give information touching such offence, (which oath the said justice of the peace or other magistrate is hereby authorised and required to administer); and if the party or parties accused shall be convicted of any such offence, either by his, her, or their own confession, or upon such information as aforesaid, he, she, or they so convicted shall forfeit and pay any sum not exceeding 5*l.* nor less than 10*s.* to H. M., his heirs and successors; and if the person or persons so convicted shall refuse or not be able forthwith to pay the sum forfeited, every such offender shall, by warrant under the hand and seal of some justice or justices of the peace or other magistrate within whose jurisdiction the person offending shall be convicted, be committed (C) to the house of correction or some other prison within the jurisdiction within which the offence shall have been committed, there to be kept without bail or mainprize for any time not exceeding three months."

Magistrates empowered to inflict a penalty on persons convicted of cruel treatment of cattle.

(A)
(B)

(C)

§ 2. Provides and enacts, "that no person shall suffer any punishment for any offence committed against this act, unless the prosecution for the same be commenced *within ten days* after the offence shall be committed; and that when any person shall suffer imprisonment pursuant to this act, for any offence contrary thereto, in default of payment of any penalty hereby imposed, such person shall not be liable afterwards to any such penalty."

No person to be punished, unless complaint made within ten days after the offence.

(*a*) See also stat. 21 *G.* 3. *c.* 67. for preventing the mischiefs that arise from driving cattle within the cities of *London* and *Westminster*, and bills of mortality.

3 G.4. c.71. Proceedings not to be quashed for want of form.

§ 3. Provides also, and enacts, "that no order or proceedings to be made or had by or before any justice of the peace or other magistrate by virtue of this act shall be quashed or vacated for want of form, and that the order of such justice or other magistrate shall be final; and that no proceedings of any such justice or other magistrate in pursuance of this act shall be removeable by *certiorari* or otherwise."

§ 4. And for the more easy and speedy conviction of offenders under this act, it is enacted, "that all and every the justice and justices of the peace, or other magistrate or magistrates, before whom any person or persons shall be convicted of any offence against this act, shall and may cause the conviction to be drawn up in the following form of words, or in any other form of words to the same effect, as the case shall happen; (*videlicet*)

Form of conviction.

BE it remembered, that on the ——— *day of* ———, *in the year of our Lord* ———, A. B. *is convicted before me, one of his majesty's justices of the peace for* ———, or *mayor or other magistrate of* ———, [as the case may be] *either by his own confession, or on the oath of one or more credible witness or witnesses* [as the case may be] *by virtue of an act made in the third year of the reign of his majesty king* George *the fourth, intituled* "An act to prevent the cruel and improper treatment of cattle," [specifying the offence, and time and place where the same was committed, as the case may be.] *Given under my hand and seal, the day and year above written.*"

Justices to order compensation to persons vexatiously complained against.

§ 5. Enacts, "that if on hearing any such complaint as is hereinbefore mentioned, the justice of the peace or other magistrate who shall hear the same shall be of opinion that such complaint was frivolous or vexatious, then and in every such case it shall be lawful for such justice of the peace or other magistrate to order, adjudge, and direct the person or persons making such complaint, to pay to the party complained of, any sum of money not exceeding the sum of 20*s*., as compensation for the trouble and expence to which such party may have been put to by such complaint; such order or adjudgment to be final between the said parties, and the sum thereby ordered or adjudged to be paid and levied in manner as is hereinbefore provided for enforcing payment of the sums of money to be forfeited by the persons convicted of the offence hereinbefore mentioned."

Limitation of actions.

§ 6. Enacts, "that if any action or suit shall be brought or commenced against any person or persons, for any thing done in pursuance of this act, it shall be brought or commenced within six calendar months next after every such cause of action shall have accrued, and not afterwards, and shall be brought, laid, and tried in the county, city, or place in which such offence shall have been committed, and not elsewhere; and the defendant or defendants in such action or suit may plead the general issue, and give this act and the special matter in evidence at any trial or trials to be had thereon, and that the same was done in pursuance and by authority of this act; and if the same shall appear to have been so done, or if any such action or suit shall not be commenced within the time before limited, or shall be laid or brought in any other county, city, or place than where the offence shall

have been committed, then and in any such case the jury or juries shall find for the defendant or defendants; or if the plaintiff or plaintiffs shall become nonsuit, or shall discontinue his action or actions, or if judgment shall be given for the defendant or defendants therein, then and in any of the cases aforesaid such defendant or defendants shall have treble costs, and shall have such remedy for recovering the same as any defendant or defendants hath or may have for his, her, or their costs in any other cases by law."

(A.) Information against a person for Cruel and Improper Treatment of Cattle, under stat. 3 G. 4. c. 71. (A.)

County of ——. } *THE information and complaint of* A. I. *of* ———, *in the county of* ———, *yeoman, made on oath before* J. P. *esq. one of his majesty's justices of the peace in and for the said county, the* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———: *Who says that* A. O., *of* ———, *in the said county, labourer, within ten days next before the date of this information, to wit, on the* ——— *day of* ———, *at* ———, *in the parish of* ———, *in the said county, did wantonly and cr uelly beat* [*abuse* or *ill-treat*, as the case may be] *a horse,* [*mare, gelding, mule, ass, ox, cow, heifer, steer, sheep,* or *other cattle,* as the case may be] *the property of* ———, *contrary to the statute made in the third year of the reign of king* George *the fourth, intituled* " An act to prevent the cruel and improper treatment of cattle," *whereby he the said* A. O. *has forfeited the sum of* ——— *pounds* [the sum not to exceed five pounds, nor be less than ten shillings] *to his majesty. Whereupon he the said* A. I. *prays the judgment of me the justice aforesaid in the premises.*

A. I.

Before me,
J. P.

(B.) Warrant to apprehend thereupon. (B.)

County of ——— } To the constable of ———, in the said county.

WHEREAS information and complaint upon oath have been made before me J. P. *esquire, one of his majesty's justices of the peace in and for the said county, by* A. I. *of* ———, *in the county aforesaid, yeoman, that within ten days next before the date of the said information, to wit, on the* ——— *day of* ———, *at* ———, *in the parish of* ———, *in the said county,* A. O. *of* ———, *in the county aforesaid, labourer, did wantonly and cruelly beat* [*abuse* or *ill treat,* as the case may be] *a horse* [*mare, gelding, mule, ass, ox, cow, heifer, steer, sheep,* or *other cattle,* as the case may be] *the property of* ———, *contrary to the statute made in the third year of the reign of King* George *the fourth, intituled* " An act to prevent the cruel and improper treatment of cattle," *whereby he the said* A. O. *has forfeited for his said offence the sum of* ——— *pounds* [the sum not to exceed five pounds, nor to be less than ten shillings] *to his majesty. These are there-*

fore to require you to apprehend (a) *the said* A. O. *and bring him before me at* ———, *in the said county, on* ———, *the* ——— *day of* ——— *instant, at the hour of* ———, *in the* ——— *noon, to answer unto the said information and complaint, and to be further dealt with according to law. Herein fail not. Given under my hand and seal the* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———.

J. P. (L. S.)

See form of Conviction, stat. 3 *G.*4. *c.*71. § 4., *ante*, p. 558.

(C.)

(C.) Commitment thereupon.

County of ——— } To the constable of ———, in the said county, and to the keeper of the house of correction at ——— in the said county.

WHEREAS A. O. *of* ———, *in the said county, labourer, is convicted before me* J. P. *esquire, one of his majesty's justices of the peace in and for the said county, upon the oath of* A. W. *of* ———, *in the county aforesaid, carpenter, a credible witness* [or *upon his own confession*, as the case may be], *for that the said* A. O., *on the* ——— *day of* ———, *at* ———, *in the parish of* ———, *in the said county, did wantonly and cruelly beat* [*abuse, or ill treat*, as the case may be] *a horse*, [*mare, gelding, mule, ass, ox, cow, heifer, steer, sheep*, or *other cattle*, as the case may be] *the property of* ———, *contrary to the statute made in the third year of the reign of king* George *the fourth, intituled* "An act to prevent the cruel and improper treatment of cattle," *whereby he the said* A. O. *has forfeited for his said offence the sum of five pounds to his majesty, but which I have mitigated to* ———, [not less than ten shillings], *and which sum he the said* A. O. *has refused to pay: These are therefore to require you the said constable to convey the said* A. O. *to the said house of correction at* ——— *aforesaid, and deliver him to the said keeper thereof, together with this precept; and you the said keeper are hereby commanded to receive the said* A. O. *into your custody in the said house of correction, there to be kept without bail or mainprize for* ———, [for any time not exceeding three months] *unless the said sum so due to his majesty shall be sooner paid. And for so doing this shall be your sufficient warrant. Given under my hand and seal the* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———.

J. P.

V. Prohibiting the Importation of Hides, Skins, or other Parts of Cattle, to prevent Infection.

9 *G.*3. c.39.

By stat. 9 *G.* 3. *c.* 39. § 10. It shall be lawful for the king, his heirs or successors, as often as he or they shall find it necessary, by proclamation with the advice of his privy council, or by his order in council, to be published in the *London Gazette*, to prohibit generally, or from any particular country or countries, the importation of any hides or skins, horns or hoofs, or any other part of any cattle or beast, into *G. B.* or *Ireland*, for such time, and

(a) A summons may be granted in the discretion of the magistrate.

under such rules, orders, and regulations, as he or they by the advice aforesaid shall judge most expedient and effectual to prevent any contagious distemper from being brought into these kingdoms.

Form of Commitment under the Black Act for maiming Cattle.

County of Stafford, to wit. { J. P. Esq., one of the justices of our lord the king, assigned to keep the peace within the said county of *Stafford*, to the constable of ———, in the said county, and to the keeper of the common gaol at *Stafford*, in the said county.

THESE are to command you the said constable in his said majesty's name, forthwith to convey and deliver into the custody of the said keeper of the said common gaol the body of A. O. *sent herewith, charged this ——— day of ———, one thousand eight hundred and ———, on the oath of* A. I. *before me the said justice, with having, on or about the ——— day of ——— instant, maliciously, unlawfully, and feloniously, cut and maimed ———, the property of the said* A. I., *at the parish of ———, in the county aforesaid, by cutting* [as the case may be] *and otherwise wounding them. And you the said keeper are hereby required to receive the said* A. O. *into your custody in the said common gaol, and him there safely keep, until he be delivered from your custody by due course of law. Hereof fail not. Given under my hand and seal the ——— day of ———, in the year of our Lord one thousand eight hundred and ———.*

J. P. (L. S.)

Certiorari.

Note.—In what particular cases a *certiorari* will or will not be issued by K. B., see the respective titles in this work.

Certiorari, what.

A *CERTIORARI* is an original writ, issuing out of the court of chancery or the K. B., directed in the king's name to the judges or officers of inferior courts, commanding them to *certify* or to return the records of a cause depending before them, to the end that the party may have the more sure and speedy justice, before the king or such justices as he shall assign to determine the cause. 1 *Bac. Abr.* 559.

What things may be certified without a writ of certiorari.

Also the justices of the peace may deliver or send into the K. B. indictments found before them, or recognizances of the peace taken before them, or force recorded by them, without any *certiorari*. *Dalt. c.* 195. p. 475.

Concerning which writ of *certiorari* it is here shown,

§ I. *In what Cases, and at whose Instance, it is grantable.*
II. *How to be granted and allowed; also, of Costs.* [5 W. c. 11.—8 & 9 W. c. 33.—5 G. 2. c. 19.—13 G. 2. c. 18.]
III. *The Effect of it.*
IV. *The Return of it.*

I. In what Cases, and at whose Instance, it is grantable.

A certiorari lies in cases where a writ of error lies not.

Except where a statute otherwise directs, as in the case of stat. 30 *G.* 2. *c.* 24., a *certiorari* lies in all judicial proceedings in which a writ of error does not lie; and it is a consequence of all inferior jurisdictions erected by act of parliament to have their proceedings returnable in the K. B. 1 *Ld. Raym.* 469. 580.

And where not specially prohibited by statute.

And therefore a *certiorari* lies to justices of the peace, even in such cases which they are impowered by statute finally to hear and determine; and the superintendency of the court of K. B. is not taken away without express words. 2 *Haw. c.* 27. § 23.

For the *certiorari*, being a beneficial writ for the subject, cannot be taken away without express words. If, therefore, a statute, authorising a summary conviction before a magistrate, give an appeal to the sessions, who are directed to hear and "finally" determine the matter, it does not take away the *certiorari*, even after such an appeal made and determined. *R.* v. *Jukes,* 8 *T. R.* 542.

Difference between summary proceedings and indictments.

R. v. *Inh. of Seton,* 7 *T. R.* 373. Defendants were indicted for not repairing a road: after verdict and judgment at the sessions, a *certiorari* was *served* to remove the record to K. B. And *per* Lord *Kenyon* C. J. In the case of summary proceedings, orders, and convictions before magistrates, the proceedings may be removed by *certiorari* after judgment; because they can only be removed by *certiorari;* but where judgment has been given on an indictment, the record must be removed by writ of error.

An indictment cannot after conviction be moved by certiorari.

So it seems agreed, that a *certiorari* shall never be granted to remove an indictment after conviction, unless for some special cause; as where the judge below is doubtful what judgment to give. 2 *Haw. c.* 27. § 31.

The court will not grant a *certiorari* on behalf of the defendant to remove an indictment from the sessions on an affidavit that it was an unusual proceeding, that he was advised that several matters of law of the greatest importance would arise upon the trial of the indictment, and that it was fit and proper it should be tried before persons learned in the law. *R.* v. *Harrison, T.* 59 *G.* 3. 1 *Chitt. Rep.* 571.

It is not a sufficient ground for the issuing of a *certiorari* that prejudices existed against the defendant, unless there was some prejudice in the court below. *R.* v. *Matthews, E.* 1815. 1 *Chitt. Rep.* 571. *notis.*

But where the defendant was a public officer (a deputy register) and his personal attendance was daily necessary, the court granted a *certiorari* to remove an indictment from the *Old Bailey* to *Gloucester,* where the defendant resided. *Anon. cited in* 1 *Chitt. Rep.* 571. *notis.* See also 1 *Chitt. Crim. L.* 375.

R. v. *Nicholls*, 2 *Str.* 1227. An indictment was removed into the court of K. B. by *certiorari*, after conviction, and before judgment. Upon which a doubt arose what the court could do, the *certiorari* being brought before judgment: and this court not being apprised of the circumstances of the offence, could not tell what judgment to give: and in *Carth.* 6. it is said, they cannot give judgment. A rule therefore was made to shew cause why the *certiorari* should not be quashed, so as to remit it back to the sessions; which was afterwards made absolute.

And in *R.* v. *Gwynne and others*, 2 *Burr.* 749. The court (on a defended motion) granted a *procedendo*, at the instance of the defendants, upon an indictment for an assault at the quarter sessions at *Brecon*, removed into the K. B. by *certiorari*, because the *certiorari* had not issued till after the defendants had confessed the assault below; though the conviction was not after trial, and though several of the justices were sworn to be near relations of Mr. *Gwynne*, one of the defendants, namely, his father, two brothers, and an uncle.

R. v. *D. Jackson*, 6 *T. R.* 145. The defendant had been convicted at the quarter sessions upon an indictment for extortion, and then removed the indictment between verdict and judgment, and obtained a rule, calling upon the prosecutor to shew cause why judgment should not be arrested for some objections to the indictment. And Lord *Kenyon* said, that the removing of proceedings *in this stage* from inferior jurisdictions ought to be discouraged; that in cases where the punishment is discretionary, and this court should be of opinion, after hearing the case argued, that the judgment ought not to be arrested, a *procedendo* must be awarded, and the party sent back again to the inferior jurisdiction, to receive judgment; that he thought the court should adopt the same mode in this instance; and that the defendant might bring a writ of error after judgment, if the record were erroneous.

Observations of Mr. King, editor of the 22d. edition of this work.

This decision seems to have been confined to cases in which the judgment was *discretionary*, but if the verdict should be at the *Midsummer* sessions, after *Trinity* term, and the defendant come in, as he must, to receive judgment at the ensuing *Michaelmas* sessions, and the judgment be not discretionary, but definite by law, it is manifest that it might be a vexatious case, if a *certiorari* could not be issued between the verdict and judgment, inasmuch as it might happen, where imprisonment for a month or other certain period was the legal penalty, that before the *certiorari* could be sued out, the defendant might have suffered the greater portion of the judgment.

And in the above case of *R.* v. *Seton*, the *certiorari* which had issued before verdict was quashed, *quia improvidè emanavit.*

A mere informality in the manner of drawing up a conviction ought not to be the inducement for removing it, but some substantial defect in the justice and legality of the proceeding itself before the magistrate.

After issue joined.

Also, it seems a good objection against granting a *certiorari*, that issue is joined in the court below, and a *venire* awarded for the trial of it. 2 *Haw. c.* 27. § 10.

E.* 1 *Ann. Reg. Generalis.

A rule was made in the court of K. B. that no *certiorari* should be granted to remove orders of justices, from which the law has

If an appeal be given within a limited time no certiorari lies till that has been determined.

given an appeal to the sessions, before the matter be determined on the appeal, because it hinders the privilege of appealing; and if any order be removed before appeal, it shall be sent down again; but if the time of appeal be expired, the case is not within the rule. By *Holt* C. J. — But afterwards, *M.* 4 *Ann.* in the case of *The Inhab. of Shellington*, it was held that advantage must be taken of this rule upon the motion to file the order; for that after it is filed, it is too late. 1 *Salk.* 147.

Case of the borough of Warwick.

But in the case of the borough of *Warwick*, (2 *Str.* 991.) there was an appeal from a poor-rate; and the sessions made an order that the churchwardens should produce the books at an adjourned day; before which, a *certiorari* was brought to remove that order: and it was held to lie, though the appeal was depending; else the order must be obeyed before the validity of it can be determined. It was also held that an appointment of overseers may be removed before an appeal to the sessions; for the rule laid down in 1 *Salk.* 147. extends only to the case where there is a limited time for appealing, as, to the *next* quarter sessions; but the statute of 43 *Eliz. c.* 2. is not so restrained, and consequently it can never be said, that the time for appealing is out: and if the appeal from an appointment is lodged, there can be no *certiorari*, till the sessions have made a determination; and a *certiorari* brought, pending such appeal, shall be superseded.

No certiorari to remove an indictment from sessions, for the purpose of having a new trial.

R. v. *Inhab. of the County of Oxford*, 13 *East*, 411. The defendants were indicted at the assizes, and found guilty of the non-repair of a public bridge. And afterwards a motion was made in the court of K. B. for a *certiorari* to remove thither the indictment and proceedings, for the purpose of moving for a new trial. But it was resolved *by the court*, that they had not the power of entering into the merits of verdicts, and granting new trials in proceedings before inferior jurisdictions; and they refused the *certiorari*.

So in *R.* v. *Nichols*, *M.* 17 *G.* 2. 13 *East*, 412. (notis) which was the case of an indictment for a conspiracy; *Lee* C. J. said, he knew no instance of a special verdict from *Hicks*'s hall removed into the K. B., and that if a conviction were removed thither by *certiorari*, the court would not give judgment upon it.

But it seems that this is only so where the fine is uncertain. *S. C.*

In *The Queen* v. *Dixon*, 1 *Salk.* 150. 3 *Salk.* 78. 2 Ld. *Raym.* 371. 6 *Mod.* 61. it was held that a *certiorari* after conviction ought to remove the indictment and conviction; and if it make mention of the indictment only, and not of the conviction, it may be quashed.

The court will not grant a certiorari to remove an indictment from the quarter sessions after judgment has been pronounced in that court.

R. v. *Inh. of Pennegoes Machynlleth*, *M.* 3 *G.* 4. 1 *B.* & *C.* 142. In this case, a bill of indictment for not repairing a bridge had been found against the defendants at the quarter sessions for the county of *Montgomery*. At the trial a verdict was found for the crown, and judgment pronounced accordingly, that a fine be imposed upon the defendants. — Sir *William Owen* now moved for a *certiorari*, to remove the indictment into the court of K. B. for the purpose of taking objections to it, and after stating that it was doubtful whether a *certiorari* ought to issue in this stage of the proceedings, he referred the court to *The Queen* v. *Dixon supra*, and *The King* v. *The Inhab. of Oxfordshire supra*, and *R.* v. *Nicholls supra*, where *Lee* C. J. recognises the authority of *The*

Queen v. *Dixon*; and he suggested that it would be hard upon the defendants to refuse this application, as the consequence would be, that they must have recourse to the more costly remedy of a writ of error. —*Per Curiam.* The defendants have thought proper to take the chance of succeeding at the sessions. They ought clearly to have applied for a *certiorari* before the trial, and it ought not to issue in this late stage of the proceedings. They can now avail themselves of objections to the indictment by writ of error only. R. R.

Certiorari to remove a conviction for selling with other than the *Winchester* bushel, allowed, on the ground of the vendee having been rejected as an incompetent witness. *R.* v. ———, 2 *Chitt. Rep.* 137.

At whose Instance it is grantable.

It hath been adjudged that wherever a *certiorari* is by law grantable for an indictment, the court is bound of right to award it at the instance of the prosecutor, because every indictment is the suit of the king, and he has a prerogative of suing in what court he pleases. But it seems to be agreed that it is left to the discretion of the court either to grant or deny it at the prayer of the defendant. *Rex* v. *Lewis and others,* 4 *Burr.* 2456. 2 *Haw. c.* 27. § 27.

The court is bound of right to grant it at the instance of the prosecutor; but discretionary as to defendant.

R. v. *Eaton,* 2 *T. R.* 89. On a motion to remove by *certiorari* a conviction by a justice on stat. 16 *G.* 3. *c.* 30. to prevent the stealing of deer, it was objected that no *certiorari* lay; for by the 23d section it is enacted that no conviction or judgment should be removed by *certiorari.* — But the *Court* were of opinion, that the result of the several provisions in the act was, that the defendant had an option either to remove the proceedings from before the convicting justice by *certiorari,* or to appeal to the sessions; that if he had adopted the latter mode, the *certiorari* would have been barred, but not in the former case. — *Buller* J. The language of the court has always been, that the king has a right to remove proceedings by *certiorari* of course; but that where a defendant makes an application of this sort, he must always lay a ground for it before the court. Lord *Mansfield,* C. J. has laid down this distinction again and again, that on the part of the crown it is a matter of course for the court to grant it, but not so on the part of the defendant. And *Buller* J. on a subsequent day said, that the rule requiring the defendant to lay a ground before the court for granting a *certiorari* had obtained since the time of *Cha.* 2., and that it appeared that it was then held as clear law, that a *certiorari* ought not to be granted in vacation, but in open court, and upon a ground shewn.

At what time it is grantable.

R. v. *Bass,* 5 *T. R.* 252. A *certiorari* is not to be granted *ex debito justitiæ,* but the application is made to the sound discretion of the court, which will not be well exercised, if they do not give an opportunity to the party applying for the writ to litigate any probable cause. If it had appeared that the justices had exceeded their jurisdiction, the court would have granted a *certiorari* in order that the conviction might be quashed, even though no objection were made to the want of jurisdiction below.

R. v. *Stannard,* 4 *T. R. c.* 161. Mr. *Attorney-General* moved on behalf of the defendant for a writ of *certiorari* to remove an indictment against an officer of excise, indicted with two others, for a riot and assault, at the *Dover* sessions. The court immediately granted the writ, without any affidavit, to support the motion. See also *R.* v. *Thomas,* 4 *M. & S.* 442.

In cases of indictment against bridges, see *Rex* v. *Cumberland, ante,* p. 479.

In *R.* v. *Penderryn,* 2 *T. R.* 260. (See vol. ii. tit. Highways, § xvii.), it seems as if, where a person is by law the prosecutor of any case, he may authorise another to sue out a *certiorari* in his name.

A distinction prevails in the practice of the crown-office between the case of the crown, and that of a private person. 1 *East,* 303. (n.) Though a statute take away the *certiorari* from a defendant, or he cannot have it without laying special ground by affidavit before the court, yet the crown, if the defendant be one of its officers, or if for any other reason it take up his defence, may have a *certiorari* in the name of the defendant, without laying any special ground.

Rex v. Allen.

R. v. *Allen,* 15 *East,* 333. The defendant lodged an appeal at *Sussex* sessions, *Midsummer* 1811, against a conviction of him as a maltster, for an offence against stat. 48 *G.* 3. *c.* 74. § 13. The form of a conviction was signed and sealed by the convicting magistrates, written on parchment, and returned by them to the sessions, and there filed. It stated that *W. A.* (the defendant) was on the 5th *June,* 1811, *on the complaint of Isaac Mann,* an excise officer, convicted, for that he the said *J. M.* &c. (stating the offence). This was dated *June* 5, 1811. It appeared in evidence upon the trial of the appeal, that after the information was exhibited, and the evidence had been laid before the convicting magistrates, and they had proceeded to convict the appellant, a form of conviction was at that time regularly signed and sealed by the convicting magistrates: this form differed from the other form, by stating that the conviction was on the complaint of *William Bourne* and *Isaac Otley,* officers of excise. This was signed and sealed by the same magistrates, and bore the same date as the conviction returned to the sessions, and was produced to the sessions on the part of the appellant. It was written on the back of the information, on paper, not on parchment; which information was *on the complaint of Isaac Mann,* and not on the complaint of *W. B.* and *J. O.* who were witnesses in support of the information. This latter form was not returned or filed on the records of the sessions, though the appellant applied to the court to have it so filed; which application was refused. It also appeared in evidence, that the appellant, for the purpose of preferring his appeal, about a fortnight after the hearing of the information before the convicting magistrates, applied to their clerk for a copy of the conviction, and that the clerk had delivered to him a copy of the form *last* above set forth: The clerk stated at the trial, that he believed he had previously spoken to the magistrates on the subject. The respondents proposed to support by evidence the form *first* mentioned. The sessions considered the last mentioned as minutes or memorandums of the conviction, and quashed the other so written on parchment, and returned to the sessions as above stated, on the ground of the

variance of that conviction from the above minutes so written on the back of the information, without going into the merits. This case now came before the court on two rules, one obtained by the defendant quashing the writ of *certiorari* for removing the conviction and order of sessions into this court: the other obtained on the part of the crown for quashing the order of sessions; which was in effect to set up again the conviction of the defendant returned by the convicting magistrates to the sessions. Upon the rule for quashing the *certiorari*, the stat. 48 *G.* 3. *c.* 74. § 15. (Malt act) was referred to, which, reciting that doubts had arisen whether any appeal lay to sessions against a conviction for penalties in respect of malt duties, empowered justices in sessions "to hear and finally determine of and concerning the truth of the facts and merits of the case in question between the parties to such judgment, &c. or conviction respectively;" and adds that "no writ of *certiorari* shall be allowed or brought to set aside any order, &c. of the sessions; provided that upon every such appeal the sessions shall proceed to re-hear, re-examine, and re-consider the truth of the facts, and the merits of the case in question between the parties, &c. and to re-examine thereto upon oath the same witnesses and no other, who shall have been before examined upon oath as witnesses before the justices, &c. at the original hearing on which the conviction, &c. so appealed from was made." — It was argued, that this provision did not restrain the crown from removing the conviction by *certiorari*; the king not being bound by the general words of a statute unless specially named. — *Le Blanc* J. referred to *The King* v. *The Inhabitants of Cumberland*, (6 *T. R.* 194. 3 *Bos. & Pull.* 354.) in which it was held that the crown was not restrained from suing out a writ of *certiorari* to remove an indictment upon the general words of an act taking away the *certiorari*.

Rex v. Allen

After argument the court held, that although it was indisputable that if there were a clear intention in the act to take away the *certiorari* from the crown, though it were not declared in express words, yet the crown would be restrained. That also, a statute saying in general terms that the decision of the sessions shall be final, or that the proceedings shall not be removed by *certiorari* or the like, will not take it away at the instance of the crown: as was shewn in many cases; and amongst them, *R.* v. *Tindal*, where the 13 *G.* 2. *c.* 18. § 5. for preventing *vexatious delays* by suing writs of *certiorari*, enacted that none should be granted; and the court there considered that *vexatious* delays could not be intended to apply to the king; and, therefore, the *certiorari* was not thereby taken away from the crown. — That if, on looking into any act which takes away the writ of *certiorari* in a particular instance, the court does not see that the crown was intended to be barred, they will not restrain it: that the act in question meant to give a privilege to the subject upon conviction, to have his cause reheard, but not to take away the prerogative of the crown: and finally, that there was nothing in the general words of this act to take away the right of the crown to remove by *certiorari*. [For the other point in this case, see *post*, tit. Conviction.]

Not for heinous crimes.

It seems that the court will not ordinarily, at the prayer of the defendant, grant a *certiorari* for the removal of an indictment of

perjury, or forgery, or other heinous misdemeanor; for such crimes deserve all possible discountenance, and the *certiorari* might delay, if not wholly discourage, the prosecution. 2 *Haw.* *c.*27. § 28.

But in extraordinary circumstances the court will sometimes dispense with this rule. As in the case of *R.* v. *Fawle*, 2 *Ld. Raym.* 1452, the court granted a *certiorari* to remove an indictment for felony found at the quarter sessions, upon affidavits that the defendant could not have a fair trial there.

So in *Daniel* v. *Phillips*, 4 *T. R.* 499. A *certiorari* removing a cause (an action for an assault) from the borough court of *Carmarthen* into K. B., was held to have well issued, as the defendants could not have an impartial trial there. — *Note.* — In this case the damages were laid under 40*s*.

Nor for other than judicial acts.

And in *R.* v. *Edward Pryse Lloyd*, Esq. *Cald.* 309. *Buller* J. said, It is settled in the case of *R.* v. *Lodiard*, *Say.* 6. that a *certiorari* does not lie to remove any other than judicial acts.

And therefore not to remove a mere order of court, or a warrant of a magistrate. *S. C.*

R. v. *Moreley*, 2 *Burr.* 1040. Although the conventicle act (22 *C.* 2. *c.* 1.) enacted, that "no other court whatsoever should intermeddle with any causes of appeal upon that act; but that they should be *finally* determined in the quarter sessions ONLY; — yet it was decided that the court of K. B. was not ousted of its right by *certiorari*.

Also, it was said that a *certiorari* does not go to try the merits of a question, but to see whether the *limited* jurisdiction have exceeded their bounds. *S. C.*

Also, that the words above mentioned only meant, that the *facts should not be* re-examined. *S. C.*

Also, that where a statute does not expressly take away a *certiorari*, and direct that "no *certiorari* shall issue," the court will grant one. *S. C.*

Where a statute takes away the *certiorari*, it does not extend to the crown. *R.* v. ———, *E.* 1820. 2 *Chit. Rep.* 136.

See also *R.* v. *Hyde and others*, 5 *T. R.* 542. *Post*, tit. Dissenters, § I. and *R.* v. *Wadley*, 4 *M.* & *S.* 508.

II. How to be granted and allowed; also, of Costs.

5 W.&M. c.11. 8 & 9 W. c.33. How to be granted on indictment or presentment in term time.

On indictment or presentment. — By stats. 5 *W.* & *M.* *c.* 11. § 2. and 8 & 9 *W.* & *M.* *c.* 33. it is enacted, that in term time no writ of *certiorari* whatsoever, at the prosecution of any party indicted, shall be granted out of the K. B., to remove any indictment or presentment of trespass or misdemeanor, before a trial had, from before the justices in sessions; unless such *certiorari* shall be granted or awarded upon motion of counsel, and by rule of court made for the granting thereof.

5 W. & M. c.11. In vacation.

But by stat. 5 *W.* & *M.* *c.* 11. § 4. in the vacation, writs of *certiorari* may be granted by any justice of the K. B.; whose name shall be indorsed on the writ, and also the name of the person at whose instance it is granted.

Recognisance to be given for

§ 2. And all the parties indicted, prosecuting such *certiorari*, shall, before the allowance thereof, find two sufficient manucaptors, who shall enter into a recognizance before a justice of the

K. B., (who shall indorse the same on the writ,) or before a justice of the peace of the county or place, in the sum of 20*l*. with condition, at the return of the writ, to appear and plead to the said indictment or presentment, in the said court of K. B., and at his and their own costs and charges to cause and procure the issue that shall be joined thereupon, or any plea relating thereunto, to be tried at the next assizes, to be held for the county wherein the indictment or presentment was found, after such *certiorari* shall be returnable, or the next term if in *London*, *Westminster*, or *Middlesex*, unless the court shall appoint any other time, and if so, then at such other time; and to give due notice of such trial to the prosecutor or his clerk in court; and also that the party prosecuting the writ of *certiorari* shall appear from day to day in the said court of K. B., and not depart until he shall be discharged by the court.

5 W.&M. c. 11

trying issue at the next assizes.

§ 2. And the said recognisance shall be certified into the K. B., with the *certiorari* and indictment, to be there filed, and the name of the prosecutor, (if he shall be the party grieved,) or some public officer, shall be indorsed on the indictment.

Recognisance to be certified.

§ 3. And if the defendant prosecuting the writ of *certiorari* be convicted of the offence for which he was indicted, then the court of K. B. shall give reasonable costs to the prosecutor, if he be the party grieved or injured, or be a justice, constable, or other civil officer, who prosecutes on account of any thing that concerned him as officer, to be taxed according to the course of the said court, who shall, for the recovery thereof, within ten days after demand, and refusal of payment, on oath, have attachment awarded; and the recognisance not to be discharged till the costs are paid. See *R.* v. *Teal*, 13 *East*, 4. p. 570.

Officers prosecuting to have double costs on conviction.

§ 2. But if the person procuring the *certiorari*, being the defendant, shall not, before allowance thereof, procure such manucaptors to be bound as aforesaid, the justices may proceed to the trial of the indictment in sessions, notwithstanding the writ of *certiorari* delivered.

Defendant not procuring manucaptors, justices to proceed.

At the prosecution of any party indicted.] This extends only to *certioraries* procured by persons indicted; from whence it follows, that those which are procured by the prosecutor of an indictment, remain as they were at common law. 2 *Haw. c.*27. § 52.

To be tried at the next assizes.] But the recognizance shall not be forfeited, unless the prosecutor gives rules according to the course of the court. 2 *Haw. c.*27. § 58.

Reasonable costs.] The master of the crown office, in taxing the costs, ought only to consider those which are subsequent to the *certiorari*. 2 *Haw. c.*27. § 56.

Costs.

R. v. *Gilbie*, *M.* 57 *G.*3. 5 *M. & S.* 520. *Gilbie* was indicted for a misdemeanor at the *Northumberland* quarter sessions, and removed the same by *certiorari* into the court of K. B., and was afterwards found guilty, and sentenced to two years' imprisonment in the gaol for that county; in execution of which sentence he was conveyed thither at the prosecutor's expence. The Master, on taxing the costs, allowed this expence to the prosecutor. A rule *nisi* having been obtained for the Master to review his taxation, *Scarlett* and *Deacon* shewed cause, and argued, that this allowance was warranted by stat. 5 and 6 *W. & M. c.*11. § 3. which enacts "that if the defendant prosecuting the *certiorari* be convicted of the offence for which he was indicted, the court of K. B shall give

The costs of conveying a defendant to gaol in execution of his sentence, are reasonable cos within stat. 5 & W. & M. c. 11 § 3. to be allowed to the prosecutor where the indictment has

R. v. Gilbie.

been removed by certiorari.

reasonable costs to the prosecutor." And they urged, that if the indictment had been left with the sessions this expence would not have been incurred, because the defendant would have been on the spot; wherefore, it was by the defendant's own act, who removed the indictment, that the cost was incurred; and it is a part of the reasonable costs. The prosecutor, in discharge of his duty, had a right to see that the sentence of the court was executed. *Chitty*, contrà, maintained, that the stat. *W. & M.* did not contemplate costs such as the present, nor, indeed, any costs after judgment. And, as to the defendant being the occasion of this expence, the sentence might as well have been to the prison of this court as to the county gaol. The place, therefore, of imprisonment was the act of the court. The recognisance of the defendant extends to the costs of the trial, and not of execution. And he cited *R.* v. *Cholsey*, 2 *Cowp.* 726. and *Queen* v. *Sumers*, 1 *Salk.* 55.—Lord *Ellenborough* C. J. Under the terms of the recognisance the defendant was bound to pay all reasonable costs. These costs, if not immediately occasioned by the *certiorari*, were certainly incurred in consequence of it. If the indictment had remained below, no such expence would have been incurred. The defendant's own act, therefore, may be said to have occasioned the expence. It is reasonable that the defendant should bear the expence for which no other fund is provided. — *Bayley* J. It is a part of the prosecution to carry it to its legal conclusion. *Per Curiam.* R. D.

If a defendant remove an indictment into K. B. by *certiorari*, giving the usual recognizance under stat. 5 & 6 *W. & M.* c. 11. and be found guilty, and die before the day in bank, his bail are liable to pay the costs. *Rex* v. *Joseph Turner*, *T.* 1824. 3 *B. & C.* 160.

Amount.

The amount of the costs to be taxed is not limited by the recognisance, which is only a further security for them, and the court will not discharge the recognisance till the taxed costs are paid to the prosecutor. *R.* v. *Teal*, 13 *East*, 4.

Stat. extends only to officers really injured.

To the prosecutor, if he be the party grieved or injured, or be a justice, constable, or other civil officer. (See § 3.)] *R.* v. *Ingleton*, 1 *Wils.* 139. The defendant was indicted for attempting to set fire to the house of one *Easton* in *York*, and the indictment also charged that the defendant solicited *Mason*, one of the prosecutors, to help to set fire to the house. *Mason* and one *Glenton* informed the mayor of *York* of this, who bound *Mason* and *Glenton* over to prosecute the defendant. The said defendant removed the indictment by *certiorari* into the court of K.B., and was thereupon convicted and fined. On payment of the fine, it was moved that the recognisance should be discharged. Unto which it was objected that the defendant was obliged to pay the costs of the prosecutors. But by the court: This case is not within the act; for the act extends only to officers and persons really injured, which neither *Glenton* nor *Mason* are, for there was no damage done to the house, but only intended to be done, nor are either of them officers. And the recognisance was discharged.

In a like case, *R.* v. *Smith*, 1 *Burr.* 54. It was moved that before the recognisance should be discharged the prosecutor should have his costs. The objection was that no name of any person, as being either the party grieved or injured, or a public civil officer, was indorsed upon the indictment. And by the court, it is enough, if it be proved that the prosecutor was such

officer, and here it is proved by affidavit. And it was ruled that the prosecutor should have his costs, before the recognisance should be discharged.

R. v. *Sharpness*, 2 *T. R.* 47. The prosecutor, a justice of the peace, had indicted the defendant, who was the keeper of the gaol at St. *Alban's*, for suffering a prisoner to escape, who had been committed by him for felony; upon which indictment the defendant had been convicted. And it was contended that the prosecutor was entitled to costs under the 5 & 6 *W.* & *M.* *c.* 11. § 3. as being a *public officer* prosecuting for the benefit of the public.—*Ashhurst* J. This is not one of those instances mentioned in the 3d sect of the act, which only extends to those officers who prosecute or present *ex officio*, or where the prosecution is carried on by the party aggrieved. If a justice were to present a road, and the same were afterwards turned into an indictment, there the justice would be entitled to costs; or if a justice were to indict a constable or other inferior officer for disobeying his order, in such case also he would be entitled to his costs: but this is not a prosecution carried on by him as a magistrate, for any other person might have indicted the defendant: the offence in this case was such as concerned the general justice of the realm.—*Buller* J. From a review of all the cases in a MS. note book, it appears that the prosecutor is not entitled to his costs: this book does not indeed include a case from *Basingstoke*, which came before this court a few years ago, but there I understand the prosecution was carried on by the clerk of the peace, whose duty it was to draw up all presentments of constables in form of indictments; and it was there determined that the prosecutor was entitled to costs. But here I cannot say it was the duty of the prosecutor as a justice of the peace to prosecute this defendant; the case originally came before him in the character of a magistrate on the complaint of some other person, and if the justice chose to take the prosecution out of private hands and to conduct it himself, he cannot be said to prosecute as a magistrate, but like any other individual. The court has always construed this act of parliament as strictly as possible. In another case, the question was, whether the prosecutor were entitled to the costs of a trial at bar; and it was determined that he was not, because the statute only extended to small offences. Rule absolute.

Justice prosecuting a gaoler for an escape not entitled to costs.

Justice indicting a road (a), or an inferior officer for disobedience, would be entitled to costs.

Clerk of the peace.

Act 5 & 6 W. & M. c. 11. construed strictly.

R. v. *Williamson*, 7 *T. R.* 32. The prosecutor of an indictment for stopping up an ancient and common footway which he had used for some years, and had since been obliged to take a more circuitous route, was held to be a *party grieved* within the meaning of stat. 5 *W.* *c.* 11. § 3.

So also persons dwelling near a steam-engine, the smoke of which affected their houses, and was very offensive and injurious, are parties grieved within the statute. *R.* v. *Dewsnap*, 16 *East*, 194.

R. on the prosecution of Kimberley and five others v. *the Inhabitants of Taunton St. Mary*, *H.* 55 *G.* 3. 3 *M.* & *S.* 465. An indictment found at the quarter sessions against the inhabitants of

(a) In *Rex* v. *Kettleworth*, 5 *T. R.* 33. it was held that a justice of the peace, who indicted a road out of repair, was entitled to costs, as being within the statute. If the verdict had been for the defendant, (Ld. Kenyon, C. J. said,) and it had appeared that the prosecution was vexatious, the attorney might have been compelled to disclose his real client.

R. v. Inh. of Taunton Saint Mary.

the parish of *Taunton Saint Mary*, for not repairing a highway, was removed by *certiorari* by the defendants, upon an affidavit stating, that on the trial of the indictment, the question whether the parish were liable to repair, and the right to repair, would come in issue. At the summer assizes for *Somersetshire* 1813, the defendants were convicted by consent, upon the counts for a horse and footway, and acquitted upon those for a carriage-way. Upon a rule for paying the taxed costs to the prosecutors, the question was, whether they were entitled under stat. 5 *W. & M.* c.11. § 3?. *Kimberley* was a constable of the manor of *Taunton Dean*, sworn for the whole manor generally, though for convenience sake the two constables were in the habit of dividing their duties, and acting only within certain districts. Part of their duty was to look to the repairs of the highways within the manor, and *K.* was directed by the steward to take the proper measures for presenting the road, if upon his view it should be deemed out of repair. The other prosecutors were parties living in the neighbourhood, and their road to the nearest market-town lay over the highway indicted, and in consequence of its being out of repair they were obliged to take a more circuitous rout by half a mile in their transit to and from the market-town and their habitations. After argument, the court held that the prosecutors were well entitled to their costs; one as constable within whose province it was to prosecute, the others as parties grieved who prosecute for an act committed or done. — Ld. *Ellenborough* C. J. said, It is extremely beneficial to the public, that these laws should be enforced, and that the subject should be encouraged in enforcing them whenever they fairly bring themselves within the description in the statute of an officer or party grieved, by obtaining an indemnity from the costs. I therefore think this is a case where the indictment might be removed, and where the parties are entitled to costs.

But where the prosecutor of an indictment for obstructing a highway did not apply for the costs until two years after judgment, and it did not appear that he had ever used the highway before it was stopped, and whilst it was stopped declared he did not care about it, the court held that he was not entitled to costs, although the prosecution was at his expense; for it is not enough to constitute a prosecutor the party grieved; there must be also some special and peculiar injury accruing to him from the obstruction, besides, that which affects all the subjects in common with him. *R.* v. *Incledon*, 1 *M. & S.* 268.

R. v. *Bartrum*, 8 *East*, 269. The defendant was indicted for perjury, and the indictment was removed from the sessions to the K. B. by *certiorari*. The prosecutor gave notice of trial to the defendant, but on the day of trial withdrew the record without having countermanded the notice in due time. And it was held by the court that he must pay the costs of the trial as in other cases.

5 W. & M. c. 11.

If the defendant prosecuting such writ of CERTIORARI *be convicted.*] This means convicted by a *judgment*; in a case, therefore, where the judgment was arrested, the court held that the defendant, not having been found guilty of any offence which the law recognises as such, (and therefore not considered as guilty persons) ought not to be mulcted with costs for having removed a

bad indictment from an inferior jurisdiction into the K. B. *R.* v. *Turner and others.* 15 *East*, 570.

See *R.* v. *Ridgway*, Vol. V. *tit.* Servants. (*Combinations.*)

May proceed to the trial.] Nevertheless they must make a return to the *certiorari*, otherwise they will be in contempt to the court; for all writs must be obeyed, unless good cause be shewn to the contrary; and the proper way of shewing it is, to return it. 2 *Haw.* c. 27. § 51.

13 G. 2. c. 18. Within what time and on what notice to be granted on an order or conviction.

On a conviction or order.] By stat. 13 *G.* 2. *c.* 18. § 5. It is enacted, that no *certiorari* shall be granted, to remove any conviction, judgment, or other proceedings, before any justice of the peace, or the general or quarter sessions, unless it be applied for in six calendar months after such proceedings had or made, and unless it be duly proved upon oath that the party suing forth the same hath given six days' notice thereof in writing to the justice or justices, or two of them, (if so many there be,) before whom such proceedings have been, to the end that such justices, or the parties therein concerned, may shew cause, if they so think fit, against issuing the *certiorari.*

Notice to remove an order of justices by *certiorari* must state the name of the party applying for the writ.

R. v. *The Justices of Lancashire, H.* 1 & 2 *G.* 4. 4 *B.* & *A.* 289. A R. N. for a writ of *certiorari* had been obtained, to remove certain orders of magistrates of the county of *Lancaster* made for the repayment by the treasurer of that county, to different high constables, of several large sums of money from the county rate, for their reasonable and extraordinary expences incurred in the execution of their duty in different cases of riot and tumult. The individual at whose instance the writs of *certiorari* were applied for, made an affidavit in support of the rule; but the notices to the magistrates of the intention to apply for the writ, contained no mention of his name, and were all signed "*Lace, Miller,* and *Lace,* attornies." It was objected, that the notices were insufficient. Vide stats. 13 *G.* 2. *c.* 18. § 5. and 5 *G.* 2. *c.* 19. *Et per Curiam* (after argument.) The notice should be given by the party suing out the writ, and that circumstance should appear upon the face of the notice itself, for the object of it, stated by the statute, is to enable the justices to shew cause against the granting the *certiorari*, and they may shew for cause, that the party suing out the writ was a stranger to the county, and not interested in the order. The justices therefore ought to have their attention called to the name of the party by the notice itself. R. D.

Six calendar months.] *R.* v. *Boughey*, 4 *T. R.* 281. These must be computed from the date of the conviction.

Six days' notice to the justices.

Hath given six days' notice thereof, &c.] In the case of *R.* v. *Justices of Glamorganshire*, 5 *T. R.* 279. it was determined that before any application for a *certiorari* to remove proceedings before justices of the peace, six days' notice thereof in writing must be given to the magistrates previous to the application for the rule to shew cause why such *certiorari* should not be granted.

Excepting in cases of indictment.

But a *certiorari* to remove an indictment from the sessions may be sued out by the prosecutor without giving the six days' previous notice required by the statute, in the case of removing "convictions, judgments, orders, and other (summary) proceedings." *R.* v. *Battams and others,* 1 *East*, 298.

A *certiorari* to remove an order of sessions subject to a case to be stated, must be applied for within six calendar months after

the order made, and not within six months after settling the case. In strictness, cases ought to be settled *sedente curiâ*. *R*. v. *Justices of Sussex*, 1 *M. & S.* 631. 734.

5 G.2. c.19. Sessions on appeal may rectify defects of form in judgments or orders of justices.

But by stat. 5 *G.* 2. *c.* 19. After reciting that in many cases where justices are empowered to give or make judgments or orders, great expenses have been occasioned by reason that on appeals to the sessions, they have been set aside upon objections to the forms of the proceedings, without examining the merits of the case, it is enacted, that upon all such appeals the sessions may rectify the defects of form in such original judgments or orders.

Giving security to prosecute with effect a *certiorari* to remove such judgment or order.

And then by § 2. it is recited, that whereas divers writs of *certiorari* had been procured to remove *such* judgments or orders, in hopes to discourage and weary out the parties to such orders, &c. And then it is enacted that no *certiorari* shall be allowed to remove any such judgment or order, unless the party prosecuting the *certiorari*, before the allowance thereof, enter into a recognisance, with sufficient sureties, before a justice of the county or place, or before the justices at sessions where such judgment or order shall have been given or made, or before a justice of the K. B., in 50*l*. with condition to prosecute the same, at his own costs and charges with effect, without wilful delay, and to pay (*a*) the party in whose favour the judgment or order was made, within a month after the same shall be confirmed, his full costs to be taxed according to the course of the court where such confirmation shall be. And if he shall not enter into such recognisance, or shall not perform the conditions, the justices may proceed and make such further order for the benefit of the party for whom the judgment shall be given, in such manner as if no *certiorari* had been granted.

Recognisance to be certified.

§ 3. The said recognisance to be certified into the K. B., and there filed, with the *certiorari* and order or judgment removed thereby.

Costs.

And if the order or judgment shall be confirmed by the court, the person entitled to the costs, for the recovery thereof, within ten days after demand made, upon oath of such demand and refusal of payment, shall have an attachment granted for the contempt; and the recognisance not to be discharged till the costs are paid and the order complied with.

Attachment.

It should seem from the wording of the first section of this act, and the words '*such* judgment or order,' in § 2. of the same, that this only applies to cases where an *appeal* is given. *Vide* note to *R*. v. *Dunn*, 8 *T. R.* 218.

Enter into a recognisance, &c.] The statutes requiring the party removing a conviction by a magistrate into K. B. to enter into a recognisance with two sureties in 50*l*. conditioned to prosecute the writ with effect, &c. is not complied with by the party and his sureties entering into a recognisance in 25*l*. each, but it must be in the entire sum of 50*l*. *R*. v. *Dunn*, 8 *T. R.* 217.

R. v. *Boughey*, 4 *T. R.* 281. The two sureties must be in addition to the party suing out the *certiorari*.

R. v. *Dunn*, 8 *T. R.* 219. If a *certiorari* be regularly issued, the court will not proceed upon it till it has been regularly re-

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(*a*) For form of bond see Vol. II. p. 648.

turned. And the party suing out the writ has no right to call upon the magistrate to allow and return it, until he has entered into a proper recognisance as the statute requires.

R. v. *Sparrow and another*, 2 *T. R.* 196. (n.) Where one has been committed, and appealed to the sessions, a *certiorari* cannot issue pending the appeal; but only when that has been determined. The case was of a commitment for vagrancy, and an appeal against the same.

III. The Effect of it.

The effect of the writ is to remove all proceedings of the nature described therein, which have taken place between the *teste* and return, although the proceedings originated after the *teste*. The magistrates below are bound to obey the writ after production of it, and notice to them in fact of such production when sitting in their judicial capacity; and after that, all further proceedings before them on the matter are erroneous. *R.* v. *Battams*, 1 *East*, 298.

Removes all between *teste* and return.

Subsequent proceedings void.

But it hath been adjudged that if a *certiorari* for the removal of an indictment before justices of the peace be not delivered before the jury be sworn for the trial of it, the justices may proceed. 2 *Haw. c.* 27. § 62.

Except where the jury is sworn.

And the justices may set a fine to complete their judgment, after a *certiorari* delivered. 2 Ld. *Raym.* 1515.

And after judgment.

A *certiorari* removes the record itself out of the inferior court; and therefore, if it remove the record against a principal, the accessary cannot there be tried. 2 *Haw. c.* 29. § 54.

Removes the record itself.

If the defendant be convicted of a capital offence, the person of the defendant must be removed by *habeas corpus*, in order to be present in court, if he will move in arrest of judgment. And herein the case of a conviction differs from that of a special verdict; where the presumption of innocence may be supposed to continue, and therefore the personal presence of the defendant in that case is not necessary at the argument of it. *R.* v. *Spragg*, 2 *Burr.* 930.

In what case the person of the defendant shall be removed.

It hath been holden that a *certiorari* for the removal of a recognisance for the good behaviour, or an appearance at sessions, will supersede the obligation of it: but this would be highly inconvenient, and the contrary seems to be supported by the better authority. 2 *Haw. c.* 27. § 65.

How far it supersedes the obligation of a recognisance.

If a *supersedeas* come out of a superior court to the justices; they ought to surcease, although the *supersedeas* be awarded against law: for they are not to dispute the command of a superior court, which is a warrant to them. *Cromp.* 129.

Case where it is awarded against law.

In the case of *R.* v. *Reason*, 6 *T. R.* 375. It was determined that if justices acquit a defendant against whom an information is laid before them for a penalty, this court cannot reverse the judgment, though the justices state (on the return of a *certiorari*) evidence, which *primâ facie* is sufficient to convict, and no contradictory or explanatory evidence. And the court said, that the evidence given was entirely and exclusively for the consideration of the justices below, who were placed in the situation of a jury; and as they had acquitted the defendant, this court could not substitute themselves in the place of the justices acting as

The court cannot judge of evidence given in the courts below.

jurymen, and convict him; that they could not judge of the credit due to the witnesses whom they did not hear examined; that they could only look to the form of the conviction, and see that the party, if convicted, had been convicted by legal evidence; and they must consider on this return that the magistrates had determined on the facts, and not on the law of the case as distinguished from the facts.

Touching the distinction between a conviction removed by *certiorari* and one brought before a court upon an appeal: on an appeal the whole case is gone into, and evidence is to be given to support the conviction; but when the conviction is removed by *certiorari*, the facts cannot be made the subject of enquiry. *Rex* v. *Jukes*, 8 *T. R.* 542.

Thus where the sessions quashed a conviction for a defect in form without hearing the appeal on the merits, and their order was removed by *certiorari* into K. B.: That court being of opinion that there was no defect in form, quashed the order, and sent back the case to the sessions to enter continuances and hear the appeal on the merits. *R.* v. *Ridgway*, *H.* 1822. 5 *B.* & *A.* 527.

See *R.* v. *Eaton*, *ante*, p. 565.

IV. The Return of it.

Return of the certiorari.

Every return of a *certiorari* ought to be under seal. 2 *Haw.* c. 27. § 70.

And although the *custos rotulorum* keep the records, yet must the justices, to whom it is directed, return the *certiorari*; and therefore, if it be directed to the justices of the peace, and the clerk of the peace only, return it, nothing is thereby removed. *Id.* § 71.

The *certiorari* may be sometimes to remove and send up the record itself, and sometimes only the tenor of the record (as the words therein be), and it must be obeyed accordingly. *Dalt.* c. 195. 2 *Haw.* c. 27. § 76.

A return was on paper (and not upon parchment): and for that reason was held by the court not good. 1 *Barnard.* 113.

Upon a *certiorari* to remove an indictment of a riot, or forcible entry, or the like, the return must have these words, *as also to hear and determine divers felonies*, &c., according to the commission; for if the return mention only that they are justices of the peace, without such words the return is insufficient. *Dalt.* c. 195.

If the person, to whom a *certiorari* is directed, do make a false return, yet the court will not stay filing it on affidavit of its being false, except in public cases, as in cases of commissioners of sewers, or for not repairing highways, or for some such special causes; because the remedy for a false return is either an action on the case at the suit of the party grieved, or an information at the suit of the king. *Dalt.* c. 195.

If the person to whom the *certiorari* is directed, do not make a return, then an *alias*, that is, a second writ, then a *pluries*, that is, a third writ, or *causam nobis significes*, shall be awarded, and then an attachment. *Cromp.* 116.

Besides these general rules, in common to all *certioraries*, there are many times special directions about granting and allowing or

not allowing them in particular cases, which are treated of under their respective titles; such as highways, game, tithes, swearing, and many others.

The return of a *certiorari* may be thus:

First, on the back of the writ indorsed, these or the like words:

The execution of this writ appears in a schedule to the same writ annexed.

And that schedule may be thus, on a piece of parchment by itself, and filed to the writ:

County of ———. } *I Sir* P. M., *baronet, one of the keepers of the peace and justices of our lord the king, assigned to keep the peace within the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the same county committed, by virtue of this writ to me delivered, do under my seal certify unto his majesty in his court of king's bench, the indictment of which mention is made in the same writ together with all matters touching the same indictment. In witness whereof I, the said Sir* P. M., *have, to these presents set my seal. Given at ——— in the said county, the ——— day of ——— in the ——— year of the reign of ———.*

Then take the record of the indictment, and close it within the schedule, and seal and send them up both together with the *certiorari*.

Challenge to fight. See *ante*, tit. **Affray.**

Challenge of Jurors. See **Jurors**, Vol. III.

Champerty. See **Maintenance**, Vol. III.

Chance-medley. See **Homicide**, Vol. II.

Charitable Donations.

[52 G. 3. c. 102. — 1 & 2 G. 4. c. 92.]

52 G. 3. c. 102.

BY stat. 52 *G.* 3. *c.* 102. for registering and securing of charitable donations, after reciting that whereas charitable donations have been given for the benefit of poor and other persons in *England* and *Wales* to a very considerable amount, and many of the aforesaid donations appear to have been lost, and others, from the neglect of payment and the inattention of those persons who ought to superintend them, are in danger of being lost, or rendered very difficult to be preserved; it is enacted, that a memorial or statement (see schedule, p. 581.) of the real and personal estate, and of the gross annual income, investment, and the general and particular objects of all charities and charitable donations, for the benefit of any poor or other persons in any place in *England* and *Wales*, which shall have been founded, established, and made, benefited, increased or secured, together with the names of the respective founders of or benefactors thereto, where known, and also of the person or persons in whose custody or controul the deeds, wills, and other instruments whereby such charities or charitable donations shall

Deeds, &c. respecting charitable donations already founded to be registered.

52 G.3. c.102.

have been founded, &c. &c. may be, and also of the names of the then trustees, feoffees, or possessors of such estates, shall, from and after six calendar months after the passing of this act, be registered by such trustees, feoffees or possessors thereof, or some or one of such persons, in the form contained in the schedule to this act annexed, in the office of the clerk of the peace of the county, or city or town, being a county of itself, within which such poor or other persons shall be; and such memorial or statement shall be signed by such person or persons causing the same to be registered in the said office of such clerk of the peace, who shall forthwith transmit a duplicate or copy of the same unto the enrolment office of the high court of chancery.

The like of charitable donations which may hereafter be founded.

§ 2. And wherever any such charity or charitable donations shall be founded, established, made or benefited, increased or secured by any deed, will, or other instrument hereafter to be made or executed by any person or persons, a like memorial or statement, according to the directions hereinbefore contained, shall be registered and transmitted as aforesaid, by such persons as are hereinbefore mentioned, within twelve months after the decease of such person or persons by whom any such will, deed or deeds, or other instrument, shall have been made or executed.

Clerks of the peace to provide proper books wherein registries shall be made.

§ 3. And for the purpose of such registries of such memorials or statements, the clerk of the peace of every county, &c. &c. within *England* and *Wales*, shall provide proper books of parchment or vellum, wherein such registers shall be entered; and every such original memorial or statement, and every such book, shall be carefully kept for public use and inspection in the office to which it shall belong, together with a correct index, to be made from time to time by such clerk of the peace, of such charities and charitable donations, distinguishing each by the name of the original, or first donor or founder thereof, where known, or the appellation or title most generally used for such charity or charitable donations.

Notice to be given in the *London Gazette*, if persons to be benefited shall not be wholly within one county.

§ 4. And in case the persons to be benefited by any such charity or charitable donations, shall not be wholly within any one county, in such case such clerk of the peace of the county where any such charity or charitable donation shall be registered, shall forthwith notify in *The London Gazette* the name or title thereof used in the index aforesaid, and the names of the several places wherein the objects of such charity or charitable donations shall be, and the particular or general objects thereof, and also the name of the county wherein such memorial or statement shall have been registered.

If donations shall not be registered, a petition may be presented to the lord chancellor, &c. complaining thereof.

§ 5. And if any such charity or charitable donation shall not be duly memorialised, stated, and registered, it shall be lawful for any two persons or more, interested in such charity or charitable donation, to present a petition to the lord chancellor, lord keeper, or lords commissioners for the custody of the great seal, or master of the rolls for the time being, or the court of exchequer, complaining thereof; and they are hereby required to hear such petition in a summary way, and upon affidavits, or such other evidence as shall be produced upon such hearing, to determine the same, and to make such order therein, and with respect to the costs of

such application and proceedings, as to him or them shall seem fit, and which order shall be final and conclusive.

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No proceeding to decide any right or title.

§ 6. Provided, that no proceedings under the provisions hereinbefore mentioned, shall extend to decide any right or title as to the property that shall be so registered, or as to the persons who shall be entitled, or claim to be entitled, to the benefit thereof, or any interest therein.

Clerk of the peace to make searches, and give copies of registers.

§ 7. And every clerk of the peace of the several counties and ridings in *England* and *Wales*, shall, as often as required, make searches concerning all memorials and statements directed by this act to be entered in his or their office as aforesaid, and shall also give copies of the same, if required by any person whatsoever, who shall pay him the sum or sums hereinafter directed to be allowed to him for such copies.

Allowance to clerk of the peace.

§ 8. And every such clerk of the peace shall be allowed for the registering every such memorial or statement, the sum of 4*s*. in case the same do not exceed four hundred words, but if such memorial or statement shall exceed four hundred words, then after the rate and proportion of 1*s*. an hundred for all the words contained in such entry, and the like fees for the like number of words contained in every copy of any entry given out of the said register, and for every notification in the *London Gazette*, the costs of such notification, and the further sum of 10*s*. for drawing and inserting the same, and transmitting the duplicate or copy hereinbefore mentioned unto the enrolment office of the high court of chancery.

and to the person inserting notification in the Gazette.

Further time to be allowed to register memorial where difficulties occur in preparing the same.

§ 9. And where any difficulty shall occur in preparing such memorial or statement, it shall be lawful for the court of quarter sessions for the county, &c. &c. wherein such memorial or statement is intended to be registered, to allow, on application, and on examination of the circumstances, such further time, not exceeding six calendar months, for the purpose of duly registering such memorial or statement.

Costs attending the preparing memorials to be allowed.

§ 10. And it shall be lawful for the court of quarter sessions of the county, &c. &c. wherein such statement or memorial shall have been registered, to allow such reasonable costs and charges attending the preparing and registering, &c. &c. such memorial or statement with reference to the income of the charity or charitable donation, to such person or persons causing the same to be registered, as such court shall think fit; and it shall and may be lawful for such person or persons who shall have caused such memorial or statement to be registered, to deduct out of the income, funds, &c. of such charity or charitable donation so memorialised and registered, the sum so allowed, provided that the said court of quarter sessions shall not allow any sum unless it shall be stated upon the declaration of the person applying, that such memorial or statement doth contain, to the best of his knowledge, a true and full account of the real and personal estate, &c. and the particular or general objects of the charity or charitable donation registered, together with the names of the respective donors or benefactors, and also of the person or persons in whose custody the deeds, wills, &c. shall be, and also the names of the trustees, feoffees, or possessors of such estate: provided, that none of the provisions hereinbefore contained shall extend to any charity or charitable donation not secured upon lands, &c. or to be permanently invested in government or any public stocks or funds,

Not to extend to any donation not secured upon lands;

2 G.3. c. 102.

charitable institutions.

nor to any charitable donation which, by the direction of the donor, or by the rules thereof, may be wholly or in part expended in the charitable purposes for which the same may have been given, at the discretion of the governors, directors, managers, or trustees.

Act not to extend to any royal foundations, nor to certain institutions:

§ 11. Nothing in this act shall be construed to extend to any hospital, school, or other charitable institution which shall have been founded, improved, or regulated by or under the authority of the king's most excellent majesty, or any of his royal predecessors, or of any special act of parliament thereunto particularly relating; nor to any charitable donation under the superintendence of any such hospital, school, or institution, nor to the governors of the corporation of the charity for the relief of poor widows and children of clergymen, nor to any friendly society, the rules whereof shall have been confirmed according to the provisions of the act or acts for the encouragement and relief of friendly societies; nor to either of the universities of *Oxford* or *Cambridge*, or to any charitable bequest, devise, gift, or foundation under the controul or management of the said universities, or any college or hall therein respectively; nor to the *Radcliffe* infirmary within the university of *Oxford*; nor to the colleges of *Westminster*, *Eton*, or *Winchester*; nor to any cathedral or collegiate church within *England* and *Wales*; nor to the Charter-house; nor to the corporation of the Trinity-house of *Deptford Strond*; nor to any funds applicable to charitable purposes for the benefit of any persons of the *Jewish* nation.

Nor to charitable institutions of Quakers.

§ 12. Nor to any charitable foundation or donation which shall have been or shall be given to and for the benefit of *Quakers*.

Nor to charitable foundations, the accounts of which are directed to be passed in the court of chancery, &c.

§ 13. Nor to any charity or charitable donation or foundation, the accounts of the income and expenditure whereof shall have been directed to be annually passed in the high court of chancery, nor to any charity or charitable donation or foundation, the annual gross income whereof shall not exceed 40*s*., and of which the trustee or trustees, feoffee or feoffees, possessor or possessors, some or one of them, shall within six months after the passing of this act deposit in the hands of the minister of the parish wherein any of the objects of such charity, charitable donation, or foundation shall be, a written memorial or statement in like form as in the schedule hereunto annexed is contained, and which by such minister shall be forthwith deposited in the parish chest.

Divers charities may be stated in the memorial.

§ 14. And where any body corporate, guild, or fraternity, shall be entrusted with the possession or distribution of divers charities, or charitable donations or foundations, or of the rents and profits thereof, in such cases all such charities, charitable donations and foundations, may be registered and stated in one and the same memorial.

Saving clause.

§ 15. Saving always to the king's most excellent majesty, and to all other persons, such power of superintending and regulating charities and charitable establishments, and the property and funds thereof, as they respectively had before the making of this act.

A.

A. Schedule to which this Act refers.

2 G.3. c. 102.

A MEMORIAL or statement in pursuance of an act for the registering and seecuring of charitable donations; whereby it is declared by the undersigned [state the name or names of the per-

sons who sign the memorial or statement] *that the real or personal estate* [state this as the case may be] *of the* [state the title or appellation of the charity or charitable donation] *consists of* [state this as the case may be; and if real estate, whether it be in lands, tenements, or hereditaments, and of what tenure, and where the same are situate, or whether of any charge or incumbrance on any lands, tenements, or hereditaments, and where situate; and if personal estate, describe the nature of it, and how secured] *and the gross annual income arising therefrom amounts to* [state the sum] *and the objects of which charity or charitable foundation are* [state the general or particular objects of the charity] *and which charity or charitable foundation was, according to the best of my* [or, *our*, as the case may be] *knowledge and belief, founded by* [state by whom; and if benefited, increased, or secured by any other person, state the same and by whom] *and the deeds, wills, and other instruments* [state this as the case may be; and if no deeds, wills, or other instruments exist, state the same] *are to the best of my* [or, *our*, as the case may be] *knowledge and belief, in the custody, possession, or controul* [state this as the case may be] *of* [state the name of the body corporate or natural person] *and the trustees, feoffees, or possessors* [state this as the case may be] *of the said real and personal estate* [state this as the case may be] *are, to the best of my* [or, *our*, as the case may be] *knowledge and belief* [state the name of the body corporate or natural person, as the case may be.] (Signed) A. B.
C. D.
E. F.

52 G. 3. c. 102

Trustee or trustees, feoffees, possessor, or possessors of the real or personal estate [as the case may be] *of the charity or charitable donation hereby memorialised and registered.*

By stat. 1 & 2 *G*. 4. *c*. 92. Lands subjected to charitable trusts may be exchanged for other lands by commissioners appointed for that purpose by the bishop of the diocese.

1 & 2 G. 4. c. 9[2]
Exchanging lands.

Charitable Trusts, &c.

[52 G. 3. c. 101.]

BY stat. 52 *G*. 3. *c*. 101. to provide a summary remedy in cases of abuses of trusts created for charitable purposes, reciting that whereas it is expedient to provide a more summary remedy in cases of breaches of trusts created for charitable purposes, as well as for the just and upright administration of the same; it is enacted,

52 G. 3. c. 10[1]

§ 1. That, "in every case of a breach of any trust, or supposed breach of any trust created for charitable purposes, or whenever the direction or order of a court of equity shall be deemed necessary for the administration of any trust for charitable purposes, it shall be lawful for any two or more persons to present a petition to the lord chancellor, lord keeper, or lords commissioners for the custody of the great seal, or master of the rolls for the time being,

In cases of breach of trust petition to be presented to the lord chancellor &c. who shall hear the same in a summary way

2 G.3. c.101.

or to the court of exchequer, stating such complaint, and praying such relief as the nature of the case may require; and it shall be lawful for the lord chancellor, lord keeper, and commissioners for the custody of the great seal, and for the master of the rolls and the court of exchequer, and they are hereby required to hear such petition in a summary way, and upon affidavits or such other evidence as shall be produced upon such hearing, to determine the same, and to make such order therein, and with respect to the costs of such applications as to him or them shall seem just; and such order shall be final and conclusive, unless the party or parties who shall think himself or themselves aggrieved thereby, shall, within two years from the time when such order shall have been passed and entered by the proper officer, have preferred an appeal from such decision to the house of lords, to whom an appeal shall lie from such order."

[Margin: and make order therein. — Appeal to the house of lords.]

§ 2. Provided, that every petition shall be signed by the persons preferring the same, in the presence of and shall be attested by the solicitor or attorney concerned for such petitioners; and every such petition shall be submitted to and be allowed by H. M.'s attorney or solicitor general, and such allowance shall be certified by him before any such petition shall be presented.

[Margin: Petitions to be signed and certified, &c.]

§ 3. And neither the petitions, nor any proceedings upon the same, or relative thereto, nor the copies of any such petitions or proceedings, shall be liable to any stamp duty.

[Margin: Proceedings not liable to any stamp duty.]

Cheat.

OF cheats punishable by public prosecution, there are two kinds,

§ I. *By the Common Law.*
II. *By Statute.*
[33 H. 8. c. 1. — 30 *G.* 2. c. 24. — *52* G. 3. c. 64.]
III. *Embezzlement.*
[50 G. 3. c. 59. — 52 G. 3. c. 63.]

I. By the Common Law.

[Margin: Cheats by the common law described.]

Cheats, which are punishable by the common law, may in general be described to be deceitful practices, in defrauding or endeavouring to defraud another of his known right, by means of some artful device, contrary to the plain rules of common honesty; as by playing with false dice; or by causing an illiterate person to execute a deed to his prejudice, by reading it over to him in words different from those in which it was written; or by persuading a woman to execute writings to another, as her trustee, upon an intended marriage, which in truth contained no such thing, but only a warrant of attorney to confess a judgment; or by suppressing a will; and such like. 1 *Haw. c.* 71. § 1.

[Margin: False message not indictable as a cheat.]

It seemeth to be the better opinion that the deceitful receiving of money from one man to the use of another, upon a false pretence of having a message and order to that purpose, is not

punishable by a criminal prosecution, because it is accompanied with no manner of artful contrivance, but only depends on a bare naked lie; and it is said to be needless to provide severe laws for such mischiefs, against which common prudence and caution may be a sufficient security. 1 *Haw. c.* 71. § 2. 2 *East's P. C.* 818.

Therefore where *Jones* obtained money of another, by pretending to come by the command of a third person to demand a debt or the like in his name, shewing no voucher or token for his authority; it was holden not indictable, for it was the party's own fault to trust him. — *Et per cur.* We are not to indict one man for making a fool of another: let him bring his action. *Jones's case*, 1 *Salk.* 379. 2 *Ld. Raym.* 1013. 6 *Mod.* 105.

Counterfeit pass.

A person for a counterfeit pass was adjudged to the pillory, and fined. *Dalt. c.* 32.

Miller changing corn.

From *R.* v. *Wood*, 1 *Sess. Ca.* 217. it appears that changing corn by a miller, and returning bad corn instead of it, is punishable by indictment; for being in the way of trade, it is deemed an offence against the public.

Delivering flour not the produce of the corn sent.

But in a more modern case (*R.* v. *Haynes*, 4 *M. & S.* 214.) it was held not indictable for a miller receiving good barley to grind at his mill, to deliver a musty and unwholesome mixture of oat and barley meal, different from the produce of the barley. In this case, Ld. *Ellenborough* C. J. said: " The allegation that the quantity (of meal) delivered was musty and unwholesome, if it had alleged that the defendant delivered it as an article for the food of man, might possibly have sustained the indictment: but I cannot say that its being musty and unwholesome necessarily and *ex vi termini* imports that it was for the food of man, and it is not stated that it was to be used for the sustentation of man, only that it was a mixture of oat and barley meal. As to the other point, that this is not an indictable offence, because it respects a matter transacted in the course of trade, and where no tokens were exhibited by which the party acquired any greater degree of credit, if the case had been that this miller was owner of a soke mill, to which the inhabitants of the vicinage were bound to resort in order to get their corn ground, and that the miller, observing the confidence of this his situation, had made it a colour for practising a fraud, this might have presented a different aspect; but as it is, it does seem, no more than the case of a common tradesman who is guilty of a fraud in a matter of trade or dealing."

Falsely pretending to discharge soldiers.

A person, falsely pretending that he had power to discharge soldiers, took money of a soldier to discharge him; and being indicted for the same, the court held the indictment to be good. *Serlestead's case*, 1 *Latch.* 202.

A minor pretending to be of age.

As there are frauds which may be relieved civilly, and not punished criminally, (with the complaints whereof the courts of equity do generally abound); so there are other frauds, which in a special case may not be helped civilly, and yet shall be punished criminally: thus if a minor go about the town, and pretending to be of age, defraud many persons by taking credit for considerable quantities of goods, and then insist on his nonage; the persons injured cannot recover the value of their goods, but they may indict and punish him for a common cheat. *Barl.* 100.

Cheating at race.

And in the case of *Q.* v. *Orbell* it was holden to be an indictable offence to get a person to lay money on a race, and to prevail

with the party to run booty; for though the cheat was private in this particular, yet it was public in its consequences. 6 *Mod.* 42.

So where two effected a cheat, by means of the one pretending to be a merchant and the other a broker, and as such bartering pretended wine for hats, they were convicted. *R.* v. *Macarthy & Fordenborough*, 2 *Ld. Raym.* 1179. But the ground of that judgment was that it was a conspiracy. 2 *East's P. C.* 824.

Selling short measure.

Finally, the distinction which, as it seemeth, will solve almost all cases of this kind, was taken in the case of *R.* v. *Wheatley*, 2 *Burr.* 1125. 1 *Blac. Rep.* 273. *S. C.* The defendant was indicted and convicted for selling beer short of the due and just measure, to wit, sixteen gallons as and for eighteen. Upon a motion in arrest of judgment, it was said by the court, This is only an inconvenience and injury to a private person, arising from that private person's own negligence and carelessness in not measuring the liquor, upon receiving it, to see whether it held the just measure or not. "Offences that are indictable must be such as affect the public, as if a man use false weights and measures, and sell by them to all or to many of his customers, or use them in the general course of his dealing: so if there be any conspiracy to cheat; for these are deceptions that common care and prudence are not sufficient to guard against. These are much more than private injuries; they are public offences." But in the present case it is a mere private imposition or deception. No false weights or measures are used; no conspiracy; only an imposition upon the person he was dealing with, in delivering him a less quantity instead of a greater; which the other carelessly accepted. It is only a non-performance of his contract; for which non-performance the other may bring his action. So the selling an unsound horse for a sound one is not indictable. The buyer should be more upon his guard: and the distinction which was laid down, as proper to be attended to in all cases of this kind is this; that in such impositions or deceits where common prudence may guard persons against their suffering from them, the offence is not indictable; but where false weights and measures are used, or false tokens produced, or such methods taken to cheat and deceive, as people cannot by any ordinary care or prudence be guarded against, there it is an offence indictable.

A mere imposition is not indictable as a cheat.

The general rule.

False weights.

The distinction, therefore, is this; if a person sell by false weights, though only to one person, it is an indictable offence; but if without false weights he sell to many persons a less quantity than he pretends to sell, it is not indictable. 3 *T. R.* 104.

Drawing false cheques.

R. v. *Lara*, 6 *T. R.* 565. This was an indictment at common law, charging the defendant with deceitfully intending, by divers crafty means and subtle devices, to obtain possession of certain lottery tickets, the property of *A.*, pretending that he wanted to purchase them, and delivered to *A.* a fictitious order for the payment of money, purporting to be a draft upon a banker for the amount, which he knew he had no authority to draw, and would not be paid; by which he obtained the tickets, and defrauded the prosecutor of the value. Judgment was arrested, on the ground that the defendant was not charged with having used any false token to accomplish the deceit; for the banker's check drawn by the defendant himself, entitled him to no more credit than his bare assertion that the money would be paid.

But in *R.* v. *Jackson*, at *Gloucester* spring assizes, 1813, 3 *Campb.* 370., on an indictment on stat. 30 *G.* 2. *c.* 24. where it appeared

that the prisoner had obtained property by giving a draft on his banker and pretending he had cash there to pay it, *Bayley* J. (before whom the prisoner was tried) said that this point had been recently before the judges, and that they were all of opinion that it is an indictable offence fraudulently to obtain goods by giving in payment a cheque upon a banker with whom the party keeps no cash, and which he knows will not be paid.

So in *R.* v. *Gibbs*, 1 *East*, 185. Ld. *Kenyon* again held that an indictment for a cheat at common law cannot be maintained unless some false token be made use of: a mere false affirmation is not sufficient.

A false affirmation is not enough.

All frauds affecting the crown and the public at large are indictable, though arising out of a particular transaction or contract with the party. 2 *East's P. C.* 821.

Therefore, an indictment lies for wilfully, deceitfully, and maliciously supplying prisoners of war with unwholesome food, not fit to be eaten by man. *Treve's case*, 2 *East's P. C.* 821.

So, obtaining the king's bounty for enlisting as a soldier by an apprentice reclaimable by his master is an indictable offence at common law. In such case, the indenture of apprenticeship must be proved by one of the two subscribing witnesses, in order to warrant the conviction. *R.* v. *Jones*, *Coventry Lent Ass.* 1777. 2 *East's P. C.* 822. 1 *Leach*, 174.

Enlistment by an apprentice.

Some of the above offences are punishable not only by fine and imprisonment, but further with other infamous punishment; (as in *Leeson's* case, who was three times set on the pillory (*a*) for cheating with false dice. *Cro. Jac.* 497.) Others are punishable by fine and imprisonment only, at the discretion of the judges, which is regulated by the circumstances of each particular case. 1 *Haw. c.* 71. § 3.

Punishment.

II. By Statute.

By stat. 33 *H.* 8. *c.* 1. § 2. 4. If any person shall falsely and deceitfully obtain or *get into his hands or possession* any money, goods, chattels, jewels, or other things, of any other person, by colour and means of any *false token*, or counterfeit letter made in another man's name; and shall be convicted thereof, by examination of witnesses, or confession, at the assizes or sessions, or by action in any court of record, he shall have such punishment by imprisonment, pillory (*a*), or other *corporal pain*, (except death,) as the court shall appoint. Saving to the party grieved such remedy by action or otherwise, for the goods so obtained, as he might have had by the common law.

33 H. 8. c. 1. Cheating by false privy tokens.

§ 3. Any two justices (1 Q.) may call and convent by process or otherwise (A) to the assizes or sessions any person suspected, and commit *or bail him* to the next assizes or sessions.

(A)

Get into his hands or possession.] A person endeavouring by a counterfeit letter to defraud another of goods, and being apprehended on suspicion of such fraud before he hath got the goods into his possession, seems not to be within this statute. *R.* v. *Brian*, 2 *Sess. Ca.* 27.

(*a*) Abolished by stat. 56 G. 3. c. 138. except in cases of perjury, or subornation of perjury. See title Pillory, &c. Vol. III.

False token.] *Note.*—The title of the statute is, "*A bill against them that counterfeit letters or private tokens to receive money or goods in other men's hands* (*a*);" and the preamble speaks of those who "*have devised and imagined privy tokens.*" *Blackerby*, 79.

On motion to quash an indictment, which was that the defendant came pretending that such a person had sent him to receive 20*l.* and received it, whereas such person did not send him: By the court, it is not indictable, unless he came with *false tokens;* for we are not to indict one man for making a fool of another.

The false token must be averred.

R. v. *Munoz*, 1 *Sess. Ca.* 201. 2 *Str.* 1127. It was adjudged that an indictment averring the offence to be by false tokens, without shewing what those false tokens are, is not sufficient; and that fraudulently procuring a note from a person, by falsely affirming that there was one in the next room that would pay the money due upon it, whereas in fact there was no such person in the next room, is not a *false token*, but a false affirmation only.

Corporal pain.] Ld. *Coke* observes hereupon, that for this offence the offender cannot be fined, but corporal pain only inflicted. 3 *Inst.* 133.

But Mr. *Hawkins* observes, that there is a precedent in *Cro. Car.* 564., *Terry's case*, by which it appears that one convicted on such a prosecution hath been adjudged not only to stand on the pillory, but to pay a fine of 500*l.* and to be imprisoned during the king's pleasure, and to be bound with good sureties for his good behaviour. 1 *Haw. c.*71. § 6.

Commit or bail him.] In this case the justices shall do well to take examination of the offence, and to certify the same to the sessions or gaol delivery, and withal to bind over the informers and witnesses to give evidence therein. *Dalt. c.*32.

30 G.2. c.24. Stat. of cheats by *false pretences.*

The legislature, however, thinking that the stat. of *H.*8. was too limited, the stat. 30 *G.*2. *c.*24. was passed, which enacts "that all persons who knowingly and designedly, *by false pretence or pretences*, shall obtain from any person or persons money, goods, wares or merchandises, with intent to cheat or defraud any persons or persons of the same;" "shall be deemed offenders against law, and the public peace; and the court before whom such offender or offenders shall be tried," shall on conviction "order such offender or offenders to be fined and imprisoned, or to be put in the pillory (*b*), or publicly whipped, or to be transported, as soon as conveniently may be," for seven years.

52 G.3. c.64. Punishing persons obtaining by false pretences money, goods, or securities for money or goods;

And by stat. 52 *G.*3. *c.*64. [extending the provisions of stat. 30 *G.*2. *c.*24.] it is enacted, that "all persons who knowingly and designedly, by false pretence or pretences, shall obtain from any person or persons, or from any body politic or corporate, any money, goods, wares, or merchandises, or any bond, bill of exchange, bank note, promissory note, or other security for the payment of money, or any warrant or order for the payment of money, or delivery, or transfer of goods or other valuable thing,

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(*a*) In Raithby's Statutes, this act is intituled "*An act concerning counterfeit letters or privy tokens to receive money or goods in other men's names.*" In the Statutes of the Realm, "*An act concerninge counterfeyt letters or privie tokens to receyve money or goods in other mens' names.*"

(*b*) Abolished by stat. 56 G. 3. c. 138. Vide ante, p. 585. (*n*)

with intent to cheat or defraud any person or persons, or any body politic or corporate, of the same; or shall knowingly send or deliver any letter or writing with or without a name or names subscribed thereto, or signed with a fictitious name or names, letter or letters threatening to accuse any person of any crime punishable by law with death, transportation, pillory, or any other infamous punishment, with a view or intent to extort or gain any bond, bill of exchange, bank note, promissory note, or other security for the payment of money, or any warrant or order for the payment of money, or delivery or transfer of goods or other valuable thing, shall be deemed offenders against law and the public peace, and shall be liable to be prosecuted and punished in like manner as if they had knowingly and designedly, by false pretence or pretences, obtained money, goods, wares, or merchandises, from any person or persons, with intent to cheat or defraud any person or persons of the same, or had sent or delivered such letter or writing with a view or intent to extort money, goods, wares, or merchandises, from the person or persons so threatened."

52 G.3. c.64. — and persons sending threatening letters to accuse persons of having committed crimes with an intent to extort or gain money or goods.

False pretences.] *R.* v. *Mason*, 2 *T. R.* 581. The defendant was indicted for obtaining money by *false pretences;* and on his trial at the sessions at *Worcester* he was convicted, and received sentence of transportation for seven years. The defendant brought a writ of error, and assigned for error that it did not appear by the indictment what the particular and specific false pretences were, by which he obtained the money.—*Buller* J. The question is not a new one: I remember a case when I was at the bar, and I argued it on the analogy to the case in *Strange* for obtaining a note by false tokens, which entirely governs this. That was a case on the statute 33 *H.*8. *c.*1. which makes it an offence to obtain money or goods by false tokens. The statute 30 *G.*2. *c.*24. only enlarges the description of the offence in the statute of *H.*8. Both statutes are made *in pari materiâ;* and whatever has been determined in the construction of one of them is a sound rule of construction for the other. The judgment was arrested in the case in *Strange;* because the indictment did not specify the *false tokens:* then, by the same reason, an indictment on stat. 30 *G.*2. *c.*24. which speaks of *false pretences,* must state what the false pretences are, otherwise the indictment is bad: there is no distinction between the two cases, the same objection which held in the one must also prevail in the other. I am of opinion that the objection is fatal.—*Grose* J. of the same opinion; observing, that this is a charge for a precise crime, and therefore it must be alleged.—Judgment reversed, and the defendant discharged.

The false pretences must be set forth in the indictment.

The operation of stat. 30 G.2. upon the 33 H.8.

An indictment for obtaining money by false pretences, charged that the defendant did falsely pretend to one Mr. *Blome,* the servant and clerk of *R. M.* &c. that *he had paid a sum of money into the bank of* England; whereas in truth and in fact he had not, &c. by means of which said false pretence defendant obtained 106*l.* of the monies of *R. M.* &c. with intent to defraud them of the same. Mr. *Blome* proved that the defendant said to him on the occasion referred to, that *the money had been paid at the bank,* not that *he had paid it.*—Lord *Ellenborough* C. J. held this to be a fatal variance: and observed, that " in an indictment for obtaining money by false pretences, the pretences must be dis-

tinctly set out, (*R.* v. *Mason*, *ante*, p. 587.) and at the trial they must be proved as laid. An assertion that money had been paid into the bank, is very different from an assertion that it had been paid into the bank by a particular individual." The defendant was acquitted. *R.* v. *Plestow*, *Sittings at Westminster after M. T.* 49 *G.* 3. 1 *Campb.* 494.

The indictment must negative by special averment the truth of the pretences.

An indictment on stat. 30 *G.* 2. *c.* 24. for obtaining money by false pretences, must negative by *special averment* the truth of the pretences. It is not enough to charge that the defendant *falsely pretended*, &c. (setting forth the pretences) *by means of which said false pretences he obtained the money*, &c.; therefore for want of such averment in the indictment, the court of K. B. reversed the judgment. *R.* v. *Perrott*, *H. T.* 54 *G.* 3. 2 *M.* & *S.* 379. All that is necessary is to show the false pretences used, and that by means of those false pretences the defendant knowingly and designedly obtained the goods in question, negativing also the pretences:

Thus in *R.* v. *Howarth*, *York Spring Ass.* 1821. 3 *Stark. Rep.* 26., which was an indictment on stat. 30 *G.* 2. *c.* 24. § 1. for obtaining goods by false pretences, *Bayley* and *Best* Js. held it unnecessary to aver that defendant did *knowingly and designedly pretend*, &c., and that it was sufficient to aver that defendant knowingly and designedly did *obtain* the goods by means of the false pretences.

Obtaining money under the false pretence of sharing a supposed bet said to have been laid with another.

R. v. *Young*, *Randall*, *Mullins*, *and Osmer*, 3 *T. R.* 98. The defendants were indicted on stat. 30 *G.* 2. *c.* 24. for obtaining money by false pretences. The first count stated that the defendants fraudulently intending to obtain the money of the king's subjects, &c. on the 23d *December*, in the 28th year, &c. at, &c. unlawfully, knowingly, wilfully, and designedly, did falsely pretend to one *Thomas* that *Young* had made a bet of 500 guineas on each side *with a colonel in the army then at Bath*, that one *W. Lewis* would on the next day run on the high road leading from *Gloucester* to *Bristol* ten miles in one hour, and that *Young* and *Mullins* did go 200 guineas each of and in the said bet, and *Randal* the other 100 guineas, and that under colour and pretence of such bet, &c. they obtained from *Thomas*, as a part of such pretended bet, 20 guineas of the 500 guineas, with intent to cheat and defraud him thereof; whereas, in fact, no such bet had been made, &c. against the form of the statute. The indictment contained several other counts to the same purport. It was objected in arrest of judgment, first, that the transaction itself was not the subject matter of a criminal prosecution; for that it did not affect the public, and being the representation of a *future* transaction, the party had an opportunity of inquiring into the truth of it, and, therefore, it was his own fault if he were deceived. Secondly, that the offence was not charged with sufficient certainty, inasmuch as the colonel's name was not mentioned. — Ld. *Kenyon* C. J. said, that the stat. of 30 *G.* 2. *c.* 24. was considered to extend to every case where a party had obtained money by falsely representing himself to be in a situation in which he was not, or any occurrence that had not happened, to which persons of ordinary caution might give credit. The 33 *Hen.* 8. *c.* 1. requires a false seal, or token, to be used in order to bring the person imposing into the confidence of the person imposed

The force of stat. 33 H. 8. c. 1.

upon; but that being found to be insufficient, the 30 *G.* 2. *c.* 24. introduced another offence, describing it in terms extremely general. That when the criminal law happens to be auxiliary to the law of morality, he did not feel any inclination to explain it away. Now this offence was within the words of the act; for the defendants have, by false pretences, fraudulently contrived to obtain money from the prosecutor, who, perhaps, too credulously gave confidence to them. As to the second objection, the indictment holds out to the defendants sufficient intelligence of the offence imputed to them. Perhaps the colonel's name with whom the wager was stated to have been made was not mentioned, so that he could not have been described with greater accuracy. But if such a wager had been actually depending, it was competent to the defendants to have proved it in their defence.— *Ashurst*, *Buller*, and *Grose*, Js. delivered their opinions to the same effect. And *Buller* J. said, the statute clearly extends to cases which were not the subject of an indictment at common law. The ingredients of this offence are obtaining money by false pretences and with intent to defraud. Barely asking another for a sum of money is not sufficient; but some pretence must be used, and that pretence false, and the intent is necessary to constitute the crime. He then mentioned a case (*R.* v. *Count Villeneuve*, 1778.) which was tried before *Morton* C. J. of *Chester*, and himself at *Chester*. The defendant applied to Sir *T. Broughton*, telling him that he was instructed by the Duke de *Lauzun* to take some horses from *Ireland* to *London*, and that he had been detained so long by contrary winds that his money was spent. Sir *T. Broughton* was thereupon induced to advance some money to him. But it afterwards appearing that the whole story was a fiction, the defendant was tried for a cheat on the stat. 30 *G.* 2. and convicted. Judgment affirmed.

Of stat. 30 G. 2. c. 24.

Rule.

Pretending to have been entrusted to take horses from *Ireland* to *London*, and to have been detained by contrary winds, till his money was expended.

R. v. *Airey*, 2 *East.* 30. This was an indictment for obtaining money under false pretences. The first count stated, That one *I. B.* delivered to the defendant, a common carrier, certain goods, to be carried by him from *K.* to one *J. L.* at *L.*, there to be delivered, &c.: that the defendant received the same goods under pretence of carrying and delivering the same, and undertook so to do: but that intending to cheat *I. B.* of his money, he afterwards unlawfully, &c. pretended to the said *I. B.* that he had carried the said goods from *K.* to *L.* for the purpose of delivering them to *J. L.*, and had there delivered them to *J. L.*, and that *J. L.* had given him, the defendant, a receipt expressing such delivery of the goods to him, but that he had lost or mislaid the same, or had left it at home; and that the defendant thereupon demanded of the said *I. B.* 16*s.* for the carriage of the said goods; by means of which said *false pretences*, he obtained from the said *I. B.* 16*s.*, with intent to cheat him of the same. And the indictment then proceeded to negative the truth of the pretences used. After conviction and judgment of transportation for seven years, the defendant brought a writ of error; but the indictment was holden to be sufficient, without alleging in express terms that the pretences were false. Ld. *Kenyon* C. J. said, No technical form of words was necessary in this case. It is objected, that it is not alleged with sufficient certainty that he obtained the money by false pretences. But unless there must be some particular arrange-

A carrier obtains the money agreed for by pretending to have delivered the goods, and to have lost the bailee's receipt.

R. v. Airey.

ment of words in such an indictment, I cannot see how the matter can be rendered more certain. Take the whole of the indictment together, and the charge appears plain and intelligible. *Grose* J. and *Lawrence* J. agreed; and *Le Blanc* J. observed that there was a positive allegation that the pretences made were false; which was all that the statute required, in that respect, to bring the case within it.

A workman employed by clothiers was to keep an account of the number of shearmen employed and the amount of their earnings and wages, which he was weekly to deliver in in writing to a clerk, who paid him the amount. He delivered in a false account, charging for more work and of other men than done, by which he obtained a larger sum than was due. This is obtaining money by a false pretence within the 30 G. 2. c. 24.; because without the false pretence he would not have obtained the credit; and is not like a case of money paid generally on account.

John Witchell was indicted before *Laurence* J. on the stat. 30 *G*. 2. *c*. 24. for obtaining money from *A*. and *H. Austin*, by false pretences. It appeared in evidence that the *Austins* were clothiers at *Wooton-under-Edge*: that the prisoner was a shearman in their service, and employed to superintend the other shearmen, and to take an account of the persons employed, and of the amount of their wages and earnings; that at the end of each week he was supplied with money to pay the different shearmen by the clerk of the prosecutors, who advanced to him such sum as, according to a written account or note delivered to him by the prisoner, was necessary to pay them. The prisoner was not authorised to draw from the clerk for money generally *on account*, but merely for the sums actually earned by the shearman; and the clerk was not authorised to pay him any sums except what he carried in his account or note as the amount of what was due to the shearmen for the work they had done. It appeared that the prisoner, on the 9th *September*, 1796, delivered to the prosecutor's clerk a note in writing in this form: — "9th *September*, 1796, shearmen, 44*l*. 11*s*. 0*d*.," which was the common form in which he made out his account of the amount of their week's wages. And it appeared further by a book in his hand-writing (which it was his business to keep of the men employed, of the work they had done, and their earnings) that there were in it the names of several men who had not been employed, who were entered as having earned different sums of money, and false accounts of the work done by those who were employed; so as to make out the sum stated in the note to be due to the shearmen. The jury found the prisoner guilty; but sentence was respited in order to take the opinion of the judges, whether this case were within the stat. 30 *G*. 2.; the prisoner's counsel contending that no cases were within the statute but those where the original credit was obtained by means of the false pretence; and that it did not extend to cases where there was a previous confidence, as he said was the case here. — The judges first conferred on the case in *Easter* term 1798, when there was some diversity of opinion on the true construction of the statute in this respect: but finally they all agreed in *Trinity* term following, on this principle, *that if the false pretence created the credit*, the case was within the statute: and they considered that in this case the defendant would not have obtained the credit but for the false account which he had delivered in, and therefore that he was properly convicted. The defendant, as was observed by one of the judges, was not to have any sum that he thought fit on account, but only so much as was worked out. *Witchell's case, Gloucester Spring Ass.* 1798. 2 *East's P. C.* 830.

Pretence of being sent by a neighbour to borrow money.

Where the prisoner went to a tradesman's house, and said she came from a Mrs. *Cook*, a neighbour, who would be much obliged if he would let her have half-a-guinea's worth of silver, and that she would send the half-guinea presently; upon which she ob-

tained the silver, went away with it, and never returned; the case was holden not to amount to felony. In truth, this was a loan of the silver, upon the faith that the amount would be repaid at another time; it was money obtained by a *false pretence;* and the same determination has been made in similar cases at the O. B. *Coleman's case, O. B.* 1785. 2 *East's P. C.* 672, 673. 1 *Leach,* 303. note (*a*). 2 *Russ.* 1395.

Obtaining money from the county treasurer by a forged order, purporting to be signed by a magistrate for payment of expenses of conveying vagrants, is an offence within 30 G. 2. c. 24.

Benjamin Rushworth was tried before *Bayley* J. at *York Sum. Ass.* 1816, for presenting a forged order to *William Lee,* the treasurer for the West Riding, pretending it was genuine, and obtaining from Mr. *Lee* under it 4*l.* 10*s.* 6*d.* The order imported to be signed by *J. Taylor,* who was a magistrate, was addressed to the treasurer of the West Riding, and directed him to pay to the constable of *Horberry* on his order 4*l.* 10*s.* for apprehending and conveying certain vagrants (whom it named) and sixpence for that order. The prisoner was known not to be the constable of *Horberry,* nor did he pretend to have any order from him, but the treasurer paid him merely because he was the bearer of that order. The indictment charged that the prisoner, with intent to cheat and defraud the *treasurer,* presented the order, and that he knowingly and designedly falsely pretended it was a genuine order. It then proceeded: "And the jurors aforesaid, upon their oath aforesaid, further say, that the prisoner, on the day and year aforesaid, at," &c. obtained the 4*l.* 10*s.* 6*d.* from Mr. *Lee;* but in this part of the indictment the intent to cheat and defraud Mr. *Lee* was not stated, nor was the obtaining charged to have been effected knowingly and designedly. A motion was made in arrest of judgment; but upon reference to the judges, the indictment was holden good, and at the following assizes the prisoner was sentenced to be imprisoned two years in the house of correction at *Wakefield. R.* v. *Rushworth, York Sum. Ass.* 1816. *MS. C. C. R.*

R. v. Cartwright. *Quære,* whether attempting to obtain money by false pretences be indictable?

Joseph Cartwright was tried before *Sutton* B. at the *Lent Assizes* for the county of the city of *Worcester,* 1806, and found guilty upon an indictment which charged that he having in his possession a paper writing purporting to be an order for 100*l.* on which there was an indorsement, and designing to obtain money by false pretences of and from *Thomas Hughes,* with intent to defraud Messrs. *Lechmere* and Co., bankers at *Worcester,* did, on the 14th of *August,* 1805, cause and procure such paper to be delivered to the said *Thomas Hughes,* who had the custody of the money of the said bankers, with a view to get 100*l.* in exchange for such paper, and represented to *Hughes* that the said paper was actually signed by *Joseph Ellis,* the drawer, and that he the said *Joseph Cartwright* was the servant of *Philip Gresley,* esquire, and all with a view to cheat the said bankers. There was a second count to the same effect, but charging the intent to be to cheat the said *Thomas Hughes.* The case was very clearly proved; and the deceit was discovered before any money was paid. The instrument being imperfect either as a draft or bill of exchange, the prisoner could not be indicted for forgery. And stat. 30 *G.* 2. *c.* 24. which makes it an offence against the law to obtain money by false-pretences, &c. not extending to the *attempt* to obtain money by such pretences; it was submitted to the judges, whether the circumstances of the above case amount to an indictable offence. The prisoner was admitted to

R. v. Cartwright.

bail,* but never has been called upon to receive judgment. The judges, as it is understood, being of opinion that the paper stated as an order was really an order. — *Le Blanc* J. thought that an attempt to commit a statutable misdemeanor was as much a misdemeanor as an attempt to commit a common law misdemeanor, but the judges did not go into the point. *MS. C. C. R.* See *R.* v. *Philipps*, 6 *East*, 464. 2 *Stra.* 866.

Result of statutes and cases.

It appears from the statutes which have been noticed, and from the cases cited,

1st. That every cheat effected by means of *any false token* claiming *public* confidence, and thereby calculated to deceive *people in general*, or in any manner touching the public interest, or in any other manner, by conspiracy or forgery, is indictable at common law.

2d. That every cheat effected by false *privy tokens*, or counterfeit letters made in other men's names, is within the stat. 33 *H.* 8. *c.* 1.

3d. And every species of cheat by *false pretences* of any kind is also indictable under stat. 30 *G.* 2. *c.* 24.

30 G. 2. c. 24. Power of the justices.

By stat. 30 *G.* 2. *c.* 24. § 2. Any justice, before whom any person charged on oath with having committed any of the offences in this act aforesaid shall be brought, shall examine by oath and such other lawful means as to him shall seem meet, touching the matters complained of, and deal with the offender according to law: and if the party charged as being the offender shall be committed to prison, or admitted to bail, to answer the matters complained of at the next sessions or assizes, the said justice shall bind over the prosecutor by recognisance in a reasonable sum to appear and prosecute such offender with effect; and if any money, goods, wares, or merchandises fraudulently obtained appear to such justice to exceed the value of 20*l.* the recognisance shall be in not less than double the value of the same.

Bail.

§ 17. And no person charged on oath with any offence against this act, and which requires bail, shall be admitted to bail before 24 hours' notice be proved on oath to have been given in writing to the prosecutor, of the names and abode of the bail, unless they be known to the justice, and he approve of them; and every such offender bound to the sessions or general gaol delivery shall be tried at the next sessions or general gaol delivery after his being apprehended, unless the court think fit to put off the trial on just cause.

Certiorari.

§ 20. No *certiorari* shall be granted to remove any indictment, conviction, or other proceedings had thereon in pursuance of this act. And this applies to the whole of the act, and not to proceedings under any particular sections thereof. *R.* v. *Smith*, *Cowp.* 24. *R.* v. *Young*, 2 *T. R.* 472.

III. Embezzlement.

[See stat. 39 G. 3. c. 85. against embezzlement by clerks and servants, *tit.* Larceny, Vol. III. p. 221.]

50 G. 3. c. 59. Any person embezzling or fraudulently

By stat. 50 *G.* 3. *c.* 59. for the more effectually preventing the embezzlement of money or securities for money belonging to the public, by any collector, receiver, or other person entrusted with the receipt, care, or management thereof; it is enacted, "That if

any person or persons to whom any money or securities for money shall be issued for public services, shall embezzle such money, or in any manner fraudulently apply the same to his own use or benefit, or for any purpose whatever except for public services, every such person so offending and being thereof duly convicted according to law, in any part of the U. K., shall be adjudged guilty of a misdemeanor, and shall be sentenced to be transported beyond the sea, or to receive such other punishment as may by law be inflicted on persons guilty of misdemeanors, and as the court before which such offenders may be tried and convicted shall adjudge."

50 G. 3. c. 59.

applying money issued to them for the public services to be adjudged guilty of a misdemeanor, and punished by transportation. &c.

§ 2. Enacts, "that if any such officer, collector or receiver so entrusted with the receipt, custody or management of any part of the public revenues, shall knowingly furnish false statements or returns of the sums of money collected by him or entrusted to his care, or of the balances of money in his hands or under his controul, such officer, collector, or receiver so offending, and being thereof convicted, shall be adjudged guilty of a misdemeanor, and shall be adjudged to suffer the punishment of fine and imprisonment, at the discretion of the court, and be rendered for ever incapable of holding or enjoying any office under the crown."

Any officer, collector, &c. entrusted with the receipt or management of the public revenues, and furnishing false statements, to be adjudged guilty of a misdemeanor.

By stat. 52 *G.* 3. *c.* 63. reciting it to be "expedient that due provision should be made to prevent the embezzlement of government and other securities for money, plate, jewels, and other personal effects, deposited for safe custody, or for any special purpose, with bankers, merchants, brokers, attornies, and other agents, entrusted by their customers and employers,"(*a*) it is enacted, "that if any person or persons with whom (as banker or bankers, merchant or merchants, broker or brokers, attorney or attornies, or agent or agents of any description whatsoever) any ordnance debenture, exchequer bill, navy, victualling or transport bill, or other bill, warrant or order for the payment of money, state lottery ticket or certificate, seaman's ticket, bank receipt for payment for any loan, *India* bond, or other bond, or any deed, note, or other security for money, or for any share or interest in any national stock or fund of this or any other country, or in the stock or fund of any corporation, company, or society established by act of parliament, or royal charter, or any power of attorney for the sale or transfer of any such stock or fund, or any share or interest therein, or any plate, jewels, or other personal effects, shall have been deposited, or shall be or remain for safe custody, or upon or for any special purpose, without any authority, either general, special, conditional or discretionary, to sell or pledge such debenture, bill, warrant, order, state lottery ticket or certificate, seaman's ticket, bank receipt, bond, deed, note, or other security, plate, jewels, or other personal effects, or to sell, transfer, or pledge the stock or fund, or share or interest in the stock or fund to which such security or power of attorney shall relate, shall sell, negotiate, transfer, assign, pledge, embezzle, secrete, or in any manner apply to his or their own use or benefit, any such debenture, bill, warrant, order, state lottery ticket or certificate, seaman's ticket, bank receipt, bond, deed, note, or other security, as hereinbefore mentioned, plate, jewels, or other personal effects, or the stock or fund, or share or interest in the stock

52 G. 3. c. 63. Persons subject to punishment, for the embezzlement of any deed, note, or other security for money entrusted to their care.

(*a*) See *Walsh's* case, Vol. III. p. 226. 4 *Taunt.* 258. 2 *Leach.* 1054.

[.]8 G. 3. c. 63.

or fund to which such security or power of attorney shall relate, in violation of good faith, and contrary to the special purpose for which the things hereinbefore mentioned, or any or either of them, shall have been deposited, or shall have been, or remained with or in the hands of such person or persons, with intent to defraud the owner or owners of any such instrument or security, or the person or persons depositing the same, or the owner or owners of the stock or fund, share or interest, to which such security or power of attorney shall relate, every person so offending in any part of the U. K. of *G. B.* and *Ireland*, shall be deemed and taken to be guilty of a misdemeanor, and being thereof convicted according to law, shall be sentenced to transportation for any term not exceeding fourteen years, or to receive such other punishment as may by law be inflicted on a person or persons guilty of a misdemeanor, and as the court, before which such offender may be tried and convicted, shall adjudge."

For preventing bankers and others from disposing, for their own use, of property deposited with them.

And by § 2. reciting "whereas it is usual for persons having dealings with bankers, merchants, brokers, attornies, and other agents, to deposit or place in the hands of such bankers, &c. sums of money, bills, notes, drafts, cheques, or orders for the payment of money, with directions or orders to invest the monies so paid or to which such bills," &c. "relate, or part thereof, in the purchase of stocks or funds, or in or upon government or other securities for money, or to apply and dispose thereof in other ways or for other purposes; and it is expedient to prevent embezzlement and malversation in such cases also; it is enacted, that if any such banker," &c. in whose hands any sum of money, bill, &c. "for the payment of any sum or sums of money shall be placed, with any order or orders in writing, and signed by the party who shall so deposit or place the same, to invest such sum or the money to which such bill," &c. "as aforesaid shall relate, in the purchase of any stock or fund, or in or upon government or other securities, or in any other way, or for any other purpose specified in such order, shall in any manner apply to his own use and benefit, any such sum, or any such bill," &c. "for the payment of any sum or sums of money as hereinbefore mentioned, in violation of good faith, and contrary to the special purpose specified in the direction or order in writing hereinbefore mentioned, with intent to defraud the owner or owners of any such sum or sums of money, or order for the payment of any sum or sums of money; every person so offending, in any part of the *U. K.*, shall in like manner be deemed and taken to be guilty of a misdemeanor, and being convicted thereof according to law, shall incur and suffer such punishment as is hereinbefore mentioned."

Act not to prevent persons receiving money due on securities.

§ 3. Provided that nothing herein contained shall be construed to extend to prevent any of the persons hereinbefore mentioned from receiving any money which shall be or become actually due and payable upon or by virtue of any of the instruments or securities hereinbefore mentioned, according to the tenor and effect thereof, in such manner as he might have done, if this act had not been made.

Act not to extend to partners not being privy to the offence.

§ 4. Provided also, that the penalty by this act annexed to the commission of any offence intended to be guarded against by this act, shall not be construed to extend to any partner or other per-

son belonging to any partnership, society or firm, except only such partner or person as shall actually commit or be accessary or privy to the commission of such offence.

52 G.3. c.63.

And by § 5. It is also provided, that nothing in this act contained, nor any proceeding, conviction or judgment to be had or taken thereupon, shall hinder, prevent, lessen, or impeach any remedy at law or in equity, which any party aggrieved by any offence against this act might have had, or have been entitled to, if this act had not been made, nor any proceeding, conviction, or judgment had been had or taken thereupon; but nevertheless the conviction of any offender against this act shall not be received in evidence in any action at law, or suit in equity against such offender; and further, that no person shall be liable to be convicted by any evidence whatever, as an offender against this act, in respect of any act, matter, or thing done by him, if he shall at any time previously to his being indicted for such offence, have disclosed such act, matter, or thing, on oath, under or in consequence of any compulsory process of any court of law or equity, in any action, suit, or proceeding, in or to which he shall have been a party, and which shall have been *bonâ fide* instituted by the party aggrieved by the thing committed by such offender.

Act not to lessen any remedy at law or equity regarding the party aggrieved.

§ 6. Nothing in this act shall extend to or affect any trustee under any marriage settlement, will, or other deed or instrument, or a mortgagee of any property whatsoever, whether real or personal, in respect of any act done by any such person in relation to the property affected by any such trust or mortgage.

Not to affect trustees or mortgagees.

By § 7. The punishment for this offence, committed in *Scotland*, shall be fine and imprisonment, or either of them, or transportation for any term not exceeding fourteen years, as the judge before whom such offender shall be tried and convicted may direct.

Punishment of persons offending against the act in *Scotland*.

By § 8. Nothing herein contained shall extend to restrain any banker, merchant, broker, attorney, or other agent, from selling, negociating, transferring, or otherwise disposing of any securities, property, or other effects as aforesaid, in their custody or possession, upon which they shall have any lien, claim, or demand, which by law entitles them to sell or dispose thereof, unless such sale, transfer, or other disposal shall extend to a greater number or to a greater part of such securities, property, or other effects as aforesaid, than shall be requisite or necessary for the purpose of paying or satisfying such lien, claim, or demand.

Act not to restrain bankers from disposing of securities on which they have a lien.

Where goods have been obtained from another by mere fraud, the court have no power of awarding restitution on conviction of the offender, as in cases of felony. *Parker* v. *Patrick*, 5 *T. R.* 175. and *R.* v. *De Veaux and others*, 2 *Leach*, 585.

No restitution of goods obtained by fraud.

A. Warrant of two Justices to apprehend an Offender, on stat. 33 *H.* 8. *c.* 1. *ante*, p. 585.

A.

County of ——. } To the constable of ——.

WHEREAS complaint hath been made unto us whose names and seals are hereunto set, two of his majesty's justices of the peace for the said county, and one of us of the quorum, *upon the oaths of*

A. I. *of* ——— *yeoman, and* B. I. *of* ——— *yeoman, that on the* ——— *day of* ———, A. O., *of* ——— *yeoman, did by a false privy token,* [or, *counterfeit letter*] *that is to say, by* [here particularise the offence] *falsely and deceitfully obtain and get into his hands and possession* [here mention the things] *from* C. I. *of* ———, *contrary to the statute in that case made: These are therefore to command you, upon sight hereof, forthwith to bring the said* A. O. *before us at* ———, *on the* ——— *day of* ———, *to answer to the said complaint, and further to be dealt withal according to law. Given under our hands and seals the* ——— *day of* ———, *A. D.* 18—.

B.

B. Warrant on stat. 30 G. 2. c. 24, p. 586. to apprehend an Offender for a Cheat.

To the constable of ——— in the county of ———.

County of ——— to wit. } *WHEREAS complaint hath been made unto me* ———, *one of his majesty's justices of the peace for the said county, upon the oath of* A. I., *of* ———, *that on the* ——— *day of* ———, A. O. *did knowingly and designedly, by false pretences, that is to say, by* ———, *obtain and get into his hands and possession* ——— *from the said* A. I., *with intent to cheat and defraud the said* A. I. *of the same, contrary to the statute in that case made. These are, therefore, in his majesty's name, to command you, upon sight hereof, forthwith to apprehend and bring the said* A. O. *before me, to answer the said complaint, and further to be dealt with according to law. Given under my hand and seal this* ——— *day of* ———, *A.D.* 18—.

C.

C. Commitment thereon.

County of ——— to wit. } ———, esquire, one of his majesty's justices of the peace for the said county of ———, to the keeper of the common gaol at ———, in the said county, or to his deputy there.

THESE are, in his majesty's name, to charge and command you, that you receive into your said gaol the body of A. O., *apprehended by* ———, *constable of* ———, *in the said county, and by him brought before me, charged upon the oath of* ———, *for that he the said* A. O., *on the* ——— *day of* ———, *at the parish of* ———, *in the said county, did knowingly and designedly, by false pretences, that is to say, by* ———, *obtain and get into his hands and possession* ——— *from the said* A. I., *with intent to cheat and defraud the said* A. I. *of the same, contrary to the statute in that case made* ———, *&c., and that you safely keep the said* A. O. *until he shall thence be delivered by due course of law. Hereof fail not. Given under my hand and seal, this* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———.

Cheese. See Butter.

Child Stealing.

[54 G. 3. c. 101.]

STAT. 54 *G.* 3. *c.* 101. reciting, that the practice of carrying away young children, by forcible or fraudulent means, from their parents or other persons having the care and charge or custody of them, commonly called child stealing, has of late much prevailed and increased, enacts, " That if any person or persons shall maliciously, either by force or fraud, lead, take, or carry away, or decoy, or entice away any child under the age of ten years, with intent to deprive its parent or parents, or any other person having the lawful care or charge of such child, of the possesion of such child, by concealing and detaining such child from such parent or parents, or other person or persons having the lawful care or charge of it; or with intent to steal any article of apparel or ornament, or other thing of value or use, upon or about the person of such child, to whomsoever such article may belong; or shall receive and harbour with any such intent as aforesaid any such child, knowing the same to have been so by force or fraud led, taken, or carried, or decoyed or enticed away as aforesaid; every such person or persons, and his, her, and their counsellors, procurors, aiders, and abettors, shall be deemed guilty of felony, and shall be subject and liable to all such pains, penalties, punishments, and forfeitures, as by the laws now in force may be inflicted upon, or are incurred by persons convicted of grand larceny."

54 G.3. c.101. Persons taking away, &c. any young child under ten years of age, or receiving and harbouring such child, are subject to the penalties usually inflicted on persons guilty of grand larceny.

§ 2. Provides, " That nothing in this act shall extend, or be construed to extend, to any person who shall have claimed to be the father of an illegitimate child, or to have any right or title in law to the possession of such child, on account of his getting possession of such child, or taking such child out of the possession of the mother thereof, or other person or persons having the lawful charge thereof."

The act not to affect fathers of illegitimate children.

§ 3. Provides, that the act shall not extend to *Scotland*.

Act not to extend to Scotland.

Warrant to apprehend for Child Stealing.

To the constable of the Parish of ———, in the county of ———, and to all other constables and peace officers in and for the said county.

County of ——— } *WHEREAS information and complaint have been made before me,* J. P. *esquire, one of his majesty's justices of the peace for the said county, upon the oath of* A. F. *of* ——— *in the said county,* ———, *that* A. O. *of* ——— *in the said county* ———, *did, on the* ——— *day of* ———, *at* ——— *aforesaid, unlawfully and maliciously by force* [or, *by fraud,* as the case may be] *lead, take,* [or, *carry away,* or, *decoy,* or, *entice away,* as the fact may be] *a certain male* [or, *female*] *child called* C. F., *then and there being the son* [or, *daughter*] *of the said* A. F. *and then and there being under the age of ten years, to wit, of*

the age of ——— *years and upwards, with intent then and there to deprive the said* A. F., *so then and there being the father of the said* C. F., *and so then and there having the lawful care or charge of the said* C. F. *of the possession of the said* C. F. *by concealing and detaining the said* C. F. *from the said* A. F. [or, *with intent to steal some article of apparel,* or *ornament,* or *other thing of value or use, upon or about the person of the said* C. F. or as the case may be.]

These are therefore to command you in his majesty's name forthwith to apprehend him the said A. O., *and to bring him before me to answer unto the said information and complaint, and to be further dealt with according to law. Herein fail you not. Given under my hand and seal the* ——— *day of* ———, *one thousand eight hundred and* ———.

Chimney Sweepers. See tit. **Apprentices,** *ante.*

Church and Church-yard.

[13 Ed. 1. st. 2. c. 6. — 5 & 6 Ed. 6. c. 4. § 1, 2, 3. — 17 Car. 2. c. 3. — and see several acts as to new churches, &c. parsonage-houses, &c. referred to, *post*, p. 598, 599.]

See **Arrest,** I. ante, and tit. **Public Worship,** Vol. V.

Original of the word church. THE ancient Saxon word is *cyrce*, the Danish *kircke*, the Belgic *kercke*, the Cimbric *kirkia* or *kurk*; probably from the Greek word κυριακος, belonging to the Lord, or κυρία οἶκος, the Lord's house; so that we have lost the ancient pronunciation of the word (except in the northern parts of *England* and *Scotland*) by softening the letters c or *ch*, as we have done in many cases; which letters the ancient *Greeks* and *Romans* always pronounced hard, as the letter *k*.

17 C. 2. c. 3. Uniting of churches. By stat. 17 *C.* 2. *c.* 3. *In cities and towns corporate, the bishop* (*with the consent of the mayor, aldermen, and justices of the peace, and of the patron*) *may unite two churches or chapels; and make order, with the like consent, that the patrons present by turns, having regard to the value of the livings united; and the incumbents thereof shall be graduates.*

§ 2. Notwithstanding any such union be made by virtue hereof, each of the parishes so united shall continue distinct as to all rates, taxes, parochial rates, charges, and duties, and all other privileges, &c. whatsoever, other than such as are before specified; and churchwardens shall be elected for each parish, as they were before such union made.

New churches. Clauses are commonly inserted in the several acts of parliament for making provision for the rectors of new churches, which clauses give certain powers to justices of the peace in relation to the assessments to be made for that purpose. And in the case of borrowing money for rebuilding clergymen's houses, by the 17 *G.* 3. *c.* 53. § 1. (called Mr. *Gilbert's* act, explained and

amended by stat. 21 *G.* 3. *c.* 66.) the estimates are to be sworn to before a justice of the peace or master in chancery; and see stat. 5 *G.*4. *c.* 89.

Stat. 56 *G.* 3. *c.* 141. enables ecclesiastical corporate bodies, under certain circumstances, to alienate lands for enlarging cemeteries or church-yards.

Enlarging church-yards.

See stats. 58 *G.* 3. *c.*45., 59 *G.* 3. *c.* 134., "for building and promoting the building of additional churches in populous parishes," as amended by stat. 5 *G.* 4. *c.* 103. Also the several stats. 43 *G.* 3. *c.* 108., 51 *G.* 3. *c.* 115., 55 *G.* 3. *c.* 147., 56 *G.* 3. *c.* 52. *c.* 141., and 1 *G.* 4. *c.* 6., relating to parsonage-houses, church-yards, and glebe-lands.

These statutes more immediately belonging to the ecclesiastical law, and not relating in any way to the office and duties of a justice of peace or parish officer, it has not been considered expedient or necessary to insert them in this work. See *Burn's Eccl. Law*, 8*th ed.*, *tit.* Churches.

By stat. 13 *Ed.* 1. *st.* 2. *c.* 6. *No fairs nor markets shall be kept in church-yards.*

Markets in the church-yard.

It is said that arrest in civil cases ought not to be of persons going to or coming from church; but that a warrant from a justice of the peace for the king may be executed in such cases. *Cro. Car.* 602. *Cro. Jac.* 321. 2 *Bulst.* 72.

But although the officer may be punished for the same either in the spiritual or temporal courts, yet the arrest (if not on a Sunday) is good in law. *Watson, c.* 34. *p.* 344.

By stat. 5 & 6 *Ed.* 6. *c.* 4. § 1. *If any person shall, by words only, quarrel, chide, or brawl, in any church or church-yard, the ordinary (on proof of two witnesses) may suspend every layman, being an offender,* ab ingressu ecclesiæ; *and every clergyman from the ministration of his office so long as he shall think meet.*

Brawling in the church or church-yard.

§ 2. *If any shall smite or lay any violent hands on another in any church or church-yard, he shall be deemed* ipso facto *excommunicate, and be excluded from the fellowship and company of* Christ's *congregation.*

Striking in the church or church-yard.

Lay any violent hands.] But churchwardens, or perhaps private persons, who whip boys for playing in the church, or pull off the hats of those who obstinately refuse to take them off themselves, or gently lay their hands on those who disturb the performance of any part of divine service, and turn them out of the church, are not within the meaning of this statute. 1 *Haw. c.* 63. § 29.

Shall be deemed ipso facto *excommunicate.*] And he shall not excuse himself by shewing that the other assaulted him. 1 *Haw. c.* 63. § 28.

Ipso facto.] Nevertheless, in this and other like cases there ought either to be a precedent conviction at law, which must be transmitted to the bishop; or else the excommunication must be declared in the spiritual court upon a proper proof of the offence there; for it is implied in every penal law that no one shall incur the penalty thereof, till he be found guilty upon a lawful trial. 1 *Haw. c.* 63. § 27.

By stat. 5 & 6 *Ed.* 6. *c.* 4. § 3. *If any shall maliciously strike another with any weapon in any church or church-yard, or shall there draw any weapon with intent to strike, and shall be convicted thereof by verdict of twelve men, or confession, or by two witnesses, before the*

5 & 6 Ed. 6. c. 4. Striking with a weapon in the church or church-yard.

judges of assize, or justices of the peace in their sessions, he shall be adjudged to have one of his ears cut off; and if he have no ears he shall be burned in the cheek with a hot iron having the letter F. *whereby he may be known and taken for a fray maker and fighter; and he shall also stand* ipso facto *excommunicate.* As to excommunication, *vide* stat. 53 *G.* 3. *c.* 127. § 1, 2., which abolishes excommunication in all cases except in definitive sentences or interlocutory decrees having force of definitive sentences, and pronounced as spiritual censures for offences of ecclesiastical cognizance.

Excommunication.

Sacrilege.

He who steals goods belonging to a parish-church may be indicted for stealing the goods of the parishioners. 1 *Haw. c.* 94. § 29.

For other matters, see *post*, tit. Churchwardens and Public Worship, Vol. V.

Churchwardens.

I. Who are exempt from being Churchwardens.

ALL *peers* of the realm, by reason of their dignity; so all *clergymen*, by reason of their order; and also all *parliament men*, by reason of their privilege, are exempted from the office of churchwardens. *Gibs.* 215.

Peers, clergymen, and members of parliament.

A counsellor or attorney ought not to be chosen churchwarden; and if he is, he may have a prohibition, by reason of his attendance on the courts at *Westminster*. 2 *Roll. Abr.* 272.

Counsellors or attornies.

By stat. 6 & 7 *W.* 3. *c.* 4. Apothecaries, who have served seven years, shall be exempted from the office of churchwarden.

Apothecaries and surgeons.

And by stat. 18 *G.* 2. *c.* 15. Freemen of the corporation of surgeons in *London* are exempted from being churchwardens.

By stat. 1 *W.* 3. *sess.* 1. *c.* 18. Dissenting teachers or preachers, in holy orders, or pretended holy orders, being duly qualified, are exempted from the office of churchwarden. 52 *G.* 3. *c.* 155. § 9.

Dissenting ministers.

By stat. 1 *W. sess.* 1. *c.* 18. Other dissenters, scrupling to take upon them the office, may execute the same by a sufficient deputy, to be approved of in like manner as other churchwardens.

Other dissenters.

And by 31 *G.* 3. *c.* 32. § 8. Every Roman Catholic minister, on taking the oath, and conforming to the regulations therein specified, shall be exempted from the office of churchwarden.

Catholic ministers.

By stat. 10 & 11 *W.* 3. *c.* 23. § 2. (*a*) All persons who have prosecuted felons to conviction are exempted from the office of churchwarden in the parish where the offence was committed.

Persons having convicted a felon.

By stat. 42 *G.* 3. *c.* 90. § 174. No serjeant, corporal, or drummer of the militia, nor any private man, from the time of his inrolment until his discharge, shall be liable to serve as a peace or parish officer.

Persons serving in the militia.

Persons who are not personally resident in a parish, but are partners of a house of trade situate within it, are not exempted from serving the office of churchwarden. *Stevenson* v. *Langston*, 1 *Hagg. Rep.* 379.

Non-resident partners.

Aliens, Papists, Jews, children, and persons convicted of felony, are disqualified from being elected churchwardens. *Anthony* v. *Seger*, 1 *Hagg. Rep.* 10.

Aliens, &c.

II. Choosing and swearing Churchwardens, with their Duty thereupon.

Churchwardens shall be chosen yearly in *Easter* week by the joint consent of the minister and parishioners, if it may be; but if they cannot agree, the minister shall choose one, and the parishioners another. 89th *Canon of* 1603.

When to be chosen, and by whom.

But where there is custom for the parishioners to choose both, that custom shall continue. *Gibs.* 242.

A person chosen churchwarden, refusing to take his office and oath, may be excommunicated for the refusal; and no prohibition will lie. *Id.* 243.

Refusing to take the office.

(*a*) By stat. 58 *G.* 3. *c.* 7. § 2. Certificates granted under stat. 10 & 11 *W.* 3. *c.* 23. are not to be transferable.

Refusing to swear them.

And the ecclesiastical judge, refusing to swear him, may be compelled by a mandamus. *Id.* 243.

Churchwarden's oath.

The churchwarden's oath, as said to have been agreed on upon mutual consultation between the civilians and common lawyers, is as follows: —

You shall swear truly and faithfully to execute the office of a churchwarden within your parish, and according to the best of your skill and knowledge present such things and persons as to your knowledge are presentable by the laws ecclesiastical of this realm: so help you God, and the contents of this book. *Gibs.* 243.

Churchwardens a body corporate.

Churchwardens being thus sworn are so far incorporated by law, as to sue for the goods of the church, and to bring an action of trespass for them; and also to purchase goods for the use of the parish; but they are not a corporation in such sort as to purchase lands, or take by grant, except in *London* by custom. *Id.* 241.

How long they shall continue.

Churchwardens shall continue in office till the new churchwardens be sworn. *Can.* 118.

III. Their Duty in levying Church Rates; and therein of Vestries and Select Vestries.

Churchwardens have no power to make a rate themselves exclusive of the parishioners, their duty being only to summon the parishioners, who are to meet in vestry, a place so called from the vestments of the minister kept there for that purpose. *Wats.* 389.

58 G.3. c.69.

By stat. 58 *G.*3. *c.*69. intituled "An act for the regulation of parish vestries," it is enacted that no vestry or meeting of the inhabitants in vestry of or for any parish shall be holden until public notice shall have been given of such vestry, and of the place and hour of holding the same, and the special purpose thereof, three days at the least before the day to be appointed for holding such vestry, by the publication of such notice in the parish church or chapel on some *Sunday* during or immediately after divine service, and by affixing the same, fairly written or printed, on the principal door of such church or chapel. (*a*)

Laying the rates.

When the churchwardens and parishioners are assembled in vestry, they are to consider what sum of money it will be necessary to raise for such repairs as shall then be needful; and after they have agreed what sum is fit, they are to make an equal levy. *Degge*, 171.

R. v. *Churchwardens and overseers of parishes of St. John and St. Margaret, Westminster*, 4 *M. & S.* 250. A rule *nisi* was obtained for a *mandamus* to the defendants, to summon a meeting of the churchwardens and overseers, and of the vestry or principal inhabitants of the two united parishes, to agree upon and ascertain the monies and rates to be assessed for the repairs of the church of St. *John*'s, which had become ruinous, &c. It was contended upon shewing cause that a *mandamus* for a church-rate would not lie. But *per Curiam* — Although this court will not

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(*a*) The provisions of this stat. and also of stat. 59 *G.* 3. *c.* 85. are inserted in Vol. IV. under § III. 5.; for which, see Vestries, in the Index.

interfere by *mandamus* to compel the churchwardens, &c. to *make* a church-rate, which is properly of ecclesiastical cognisance, yet they will put in motion their functions *in ordine ad*, i. e. to assemble in order to inquire and agree whether it be fit that a rate should be made. R. A.

53 G.3. c. 127. For recovery of church or chapel rates.

By stat. 53 *G.*3. *c.*127. § 7. For the more easily and speedily recovering of church rates or chapel rates of limited amount, it is enacted, that " if any one duly rated to a church rate or chapel rate, the validity whereof has not been questioned in any ecclesiastical court, shall refuse or neglect to pay the same sum at which he is so rated, it shall and may be lawful for any one justice of the peace of the same county, riding, city, liberty, or town corporate, where the church or chapel is situated, in respect whereof such rate shall have been made, upon the complaint (A) of any churchwarden or churchwardens, chapelwarden or chapelwardens, who ought to receive and collect the same, by warrant (B) under the hand and seal of such justice, to convene before any two or more such justices of the peace any person so refusing or neglecting to pay such rate, and to examine upon oath (which oath the said justices are hereby empowered to administer) into the merits of the said complaint, and by order (C) under their hands and seals to direct the payment of what is due and payable in respect to such rate, so as the sum ordered and directed to be paid as aforesaid do not exceed 10*l.*, over and above the reasonable costs and charges, to be ascertained by such justices; and upon refusal or neglect of such party to pay according to such order, it shall and may be lawful for any one of such justices, by warrant (D) under his hand and seal, to levy the money thereby ordered to be paid, together with the amount of such costs and charges, by distress and sale of the goods of such offender, his executors or administrators, rendering only the overplus to him or her, the necessary charges of distraining being thereout first deducted and allowed by the said justites:" (see stat. 54 *G.*3. *c.*170. § 12. Vol IV., p. 147.) and any person finding himself aggrieved by any judgment given by two or more such justices, may appeal to the next general quarter sessions to be held for the county, city, &c. &c. wherein the church or chapel is situated, in respect whereof such rate shall have been made, and the justices of the peace there present, shall proceed finally to hear and determine the matter, and to reverse the said judgment if they shall see cause; and if the judgment given by the first two or more justices be affirmed, the same shall be decreed by order of sessions, with costs, against the appellant, to be levied by distress and sale of the goods and chattels of the said party appellant: provided always, that in case any such appeal, no warrant of distress shall be granted until after such appeal be determined: " Provided also, that nothing herein contained shall extend to alter or interfere with the jurisdiction of the ecclesiastical courts to hear and determine causes touching the validity of any church rate or chapel rate, or from proceeding to enforce the payment of any such rate, if the same shall exceed the sum of 10*l.* from the party proceeded against: provided likewise, that if the validity of such rate, or the liability of the person from whom it is demanded to pay the same, be disputed, and the party disputing the same give notice thereof to the justices, the justices shall forbear giving judgment thereupon, and the person or persons demanding the

(A) (B) (C) (D)

Appeal.

In case of appeal warrant of distress not to issue.

Saving of the ecclesiastical jurisdiction.

Rate exceeding 10*l.*

53 G.3. c.127.

same may then proceed to the recovery of their demand, according to the due course of law, as heretofore used, and accustomed: provided likewise, that nothing herein contained shall affect any regulations that may have been made by authority of parliament, respecting the church rates or chapel rates of any particular parishes or districts."

A party summoned before two justices for nonpayment of a church-rate, may under 53 G.3. c.127. § 7. give them notice that he disputes the validity of the rate, or his liability to pay the same, though no proceeding is commenced in the ecclesiastical court; and where a party so summoned told the justices that he would bring an action against any person who ventured to levy the rate, as he thought he had no right to pay, because he had no claim to or seat in the chapel: Held, that this was sufficient notice.

(a) Sic in orig.

R. v. *The Chapelwardens of Milnrow, T.* 56 *G.* 3. 5 *M.* & *S.* 248. Upon appeal against an order of two justices for the county of *Lancaster*, directing the payment of a chapel rate, the sessions quashed the order, subject to the opinion of the court of K. B. on the following case: — There had been an old chapel at *Milnrow*. In 1796, a new one was built in its stead, in a new situation, three or four hundred yards from the site of the old one. Rates had been made for the repairs of the chapel within the last twenty years, and the sums in the present rate were the same as those charged in a former rate. In the year 1815, this chapel was nearly pulled down, and a new one built on the old foundation, and an entirely new gallery erected in it by the chapelwardens. When the chapel was nearly finished, a faculty was obtained, which was for "the repairing and rebuilding of *Milnrow*-chapel, and for a new gallery;" and a rate was made by the chapelwardens in the vestry of the chapel, in the presence and with the consent of the majority of the inhabitants of the chapelry who attended on the occasion, and signed their names to the rate. *Ralph Bealey* was an inhabitant of the chapelry, and the occupier of a house in it, and was charged by the rate in the sum of 3*l.* 6*s.* 11*d.* in respect of such occupation. On complaint made by one of the chapelwardens of the non-payment of this sum, a warrant was issued to summon *Bealey* before the two justices named in this order, and he appeared accordingly. At the hearing before these justices, and in their presence, *Bealey* declared *he would bring an action against any person who ventured to levy the rate, as he thought that he had no right* (a) *to pay, because he had no claim to or seat in the chapel.* The justices having made an order upon *Bealey*, directing payment of this rate, *Bealey* appealed to the sessions; and at the trial of this appeal it appeared to the sessions, that at the time when the parties were before the two justices, opinions of civilians had been taken for the purpose of trying the question in the ecclesiastical court, but that this circumstance was not stated to the two justices. The session being of opinion, that what *Bealey* stated upon the hearing before the two justices was sufficient notice to them that he disputed his liability to be rated, and, therefore, that their order improperly issued, quashed the same, without deciding on the question of the validity of the rate. — After argument, Ld. *Ellenborough* C. J. said, Before the passing of stat. 53 *G.* 3. *c.* 127. there was not any remedy by summary application to the justices in the case of non-payment of a church rate; nor was there any provision before the 7 & 8 *W.* 3. for the recovery of small tithes. It was intended by the statute in question to give a remedy by summary application in the case of a church rate withheld, but not to invest justices of the peace with a power which belongs exclusively to the ecclesiastical court, that of deciding upon the validity of the rate or the liability of the person to pay it. Those things were expressly excepted out of the operation of the statute. A jurisdiction is created, with certain exceptions; as,

R. v. Chapel-wardens of Milnrow.

first, that the amount shall not be beyond 10*l.*; in the next place, it must be in respect of a matter where the validity of the rate has not been questioned in the ecclesiastical court. These are matters of exception prior to the issuing of a warrant. Unless it be made to appear affirmatively before the justices that the amount is less than 10*l.*, and that no question is made upon the rate in the ecclesiastical court, the justice would not have jurisdiction to issue his warrant. Now in this case the jurisdiction of the justice is well initiated. Then comes the proviso which limits the exercise of their jurisdiction. It provides that, although the subject matter be under 10*l.*, yet if there should be a purpose notified by the party who is brought before the justices, that he means to dispute the validity of the rate or his liability to pay it, the justices shall forbear. This is the point at which they are to hold their hand. I cannot discover any thing conflicting between this proviso and the enacting part, when I refer the language of each to its proper object. The enacting clause refers to the commencement of the justice's jurisdiction; the proviso to the proceeding upon it after it has well attached: it says, they shall forbear giving judgment thereupon; it does not exclude them from jurisdiction, but only from proceeding further; and it adds, "the person may then proceed to recover his demand according to the due course of law as before accustomed." Therefore it is a *cesser* of the proceeding before the magistrates. Thus, by referring the introductory part and the proviso to their proper object, the whole is consistent; and the only question that remains is, whether what passed before the magistrates was a sufficient notice of the party's intention to dispute the rate. To be sure this part of the case makes the statute liable to great uncertainty in its application. And, perhaps, if a person was merely to say before the justices that he disputed the rate, it would not be sufficient, inasmuch as he ought to shew something to manifest that he disputed it *bonâ fide*. But here the party says in effect, "*I dispute the validity of the rate,*" and not only so, but he gives his reason for it, which may, perhaps, be a bad one, "*because he had no claim to or seat in the chapel.*" Nevertheless, the reason, however disputable its efficacy may be, was grounded upon a matter which might be litigated in the proper forum. Therefore it does not appear that there was any *mala fides*; on the contrary, it appears that the party had premeditated the subject matter of dispute; and it is further stated, that he had consulted thereon with ecclesiastical lawyers. Then, was it not sufficiently intimated to the justices by the party that he disputed his liability, so as to satisfy the general language of the proviso? It is disputed on a colour at least, and ground of right, and the justices are informed that he means to stand on it, for that if they proceed to levy the rate he would bring his action. I think, therefore, that this was such a notice to the justices of the party's disputing the rate as called upon them to forbear proceeding to judgment. As to the argument derived from the appeal, it is not difficult to conceive many causes of appeal besides that which might affect the validity of the rate, to account for such a provision. — *Bayley* J. Looking at the object of the enacting clause, and of the proviso in question, I think they are consistent with each other, and that no difficulty arises in this respect. Before the passing of this statute, a considerable delay

R. v. Chapel-wardens of Milnrow.
53 G.3. c.127.

and expence was incurred in the recovery of church rates. This was a considerable hardship on the churchwardens, and also on the party paying the rate. The object of the legislature, as it seems to me, was not to draw questionable cases *ad aliud examen*, but to provide a summary remedy in cases where the party did not dispute the obligation to pay. The legislature never intended to deprive the party of his right to have the validity of the rate questioned in the proper forum. The enacting clause provides "that a justice of the peace may issue his warrant, if the validity of the rate has not been questioned in any ecclesiastical court;" therefore, if it has been questioned by libel, appeal, or otherwise, in which the parties rated are actors, there the justice cannot interfere: his jurisdiction is stopped *in limine*. But, supposing the justice entitled to issue his summons, still it was not intended to deprive the party of his right to have the validity of the rate or his liability questioned, in the proper forum; and, therefore, at the hearing before the magistrates he may insist on this right, and give notice that he means to dispute the validity in the ecclesiastical court. The legislature never intended the magistrates should enter into the discussion of that question, and it would have been hard if they had enacted otherwise. I think, therefore, that the jurisdiction of the magistrates was well determined by the party's insisting on disputing his liability to pay the rate. Then the only question is, whether he gave sufficient notice. His language before the justice is thus; "*I will bring an action against any person who ventures to levy the rate: I think I have no right to pay, because I have no claim or seat in the church.*" Whether this be or be not a valid ground for disputing his liability to pay the rate, it is not for us to decide; nor was it for the justices, against the will of the party. It seems to me that the party had a right to insist that this question should go before the ecclesiastical court.—*Holroyd* J. (a) The enacting part of the clause, which gives jurisdiction to the justices, enacts, that if the validity of the rate has not been questioned in any ecclesiastical court, one justice may summon the party refusing to pay to appear before two justices, so that the condition respecting the proceeding in any ecclesiastical court applies to the issuing of the summons, and is not inconsistent with the party's disputing the validity of the rate when he comes before the justices, although a proceeding may not then have been instituted in the ecclesiastical court. Neither does the appeal afford to my mind any argument against this construction, because there are numerous grounds of appeal to which that provision may be referred. It seems to me, also, that the notice was sufficient that the party disputed his being liable, for he said that which was tantamount to saying that he was not liable. This is somewhat analogous to what happens in the ecclesiastical court when a modus is pleaded, for in that case, although the court had jurisdiction before, yet it cannot proceed afterwards against the consent of either party. It seems to me that the legislature intended that the magistrate should not have any jurisdiction to determine the validity of the rate, or the liability of the party to pay it, but that this question should be left, as before, to the ecclesiastical court, the proper jurisdiction. Order of sessions confirmed.

(a) *Abbott* J. was absent.

Stead v. Heaton.

A custom in the parish, to pay the church rate by divisions, is good; and an allegation in an action for a false return to a *mandamus*, of a custom of payment by the chapelwardens of *A.* to the churchwardens of *B.*, may be supported by evidence of a custom of payment to officers acting only for the township of *B.*, not co-extensive with the parish of *B.*, but who have always been described as the churchwardens of *B.*, for being merely a name of description, it is sufficient, though it be not their legal name. *Stead* v. *Heaton*, 4 *T. R.* 669.

R. v. Chapelwardens of Haworth.

R. v. *Chapelwardens of the township of* Haworth, *in the parish of* Bradworth, *in the W. R. of* Yorkshire, 12 *East*, 556. Motion for a *mandamus* to these defendants, to make a rate upon the inhabitants of their township for levying 50*l.*, being one-fifth part of a church rate charged upon the parish at large, for *reimbursing* the churchwardens of the town of *Bradford* such sums as they had expended, or might hereafter expend, on the parish church of *Bradford*, and to pay the said 50*l.* when raised to those churchwardens. The relators' affidavit stated that the parish of *Bradford* consisted of fifteen townships, of which *Haworth* is one, and that there is an immemorial custom in the parish, that each of the townships should contribute to the churchrates in certain proportions stated, of which the proportion of *Haworth* was one-fifth: that at a vestry held in the parish church on the 4th of *April* last, after regular notice, it was ordered that the churchwardens of *Bradford* should collect the rate in question of 250*l.* for *reimbursing* themselves such sums as they had expended, or might thereafter expend on the parish-church of *Bradford*, and then stated a demand and refusal of the proportion of the rate payable by the defendants.—In answer, it was objected, 1st. That any custom for fixing on a part of a parish a certain proportion of a church rate, which ought to be equally distributed on all the parishioners, was bad upon the face of it, as making that certain and invariable which, in its very nature, was variable and fluctuating, unequal and unjust. This question, it was said, was not decided in *Stead* v. *Heaton*, 4 *T. R.* 669., which turned on another point as to the evidence of the custom.—Lord *Ellenborough* C. J. We shall not decide this question upon affidavits, but shall for this purpose assume the custom to be good; the point, however, did not pass without consideration in *Stead* v. *Heaton.*—Secondly, that no rate could be made to reimburse churchwardens, for they were not bound, nor ought they to lay out money till they had collected it in hand, *non constat*, that it is to reimburse them what they have expended within the same year. And *Dawson* v. *Wilkinson* (*Andr.* 11., and *Cas. temp. Hardw.* 381.) and *Tawney's* case (2 *Ld. Raym.* 1009.) were cited as negativing the power of churchwardens to make a rate to reimburse themselves, or former churchwardens.—Lord *Ellenborough* C. J. The regular way is for the churchwardens to raise the money beforehand, by a rate made in the regular form for the repairs of the church, in order that the money may be paid by the existing inhabitants at the time, on whom the burden ought properly to fall. It will, indeed, sometimes happen, that more may be required to be expended at the time, than the actual sum collected will cover, but still it is admitted that the inconvenience has been gotten rid of in such cases by an evasion, for the rate has been made in the

R. v. Chapel-wardens of Haworth.

common form, and when the churchwardens have collected the money, they have repaid themselves what they had disbursed for the parish. But we cannot now grant the *mandamus*, to make a rate in the common form; for the demand made upon the defendants, was to make a rate in the form in which the rule is drawn up, to reimburse the churchwardens of *Bradford* for money which they had expended, as well as for what they might expend, and the refusal of the defendants to make such a rate applies to the form of the demand, and we cannot now qualify their refusal; at present it appears that the rate prayed for in this form would be bad, and therefore we cannot enforce it by *mandamus*. — *Per Cur. R. D.*

Nor will equity decree a church rate to be made to reimburse a former churchwarden monies laid out while in office, though in pursuance of an order of vestry. *Lanchester* v. *Thompson and others*, 5 *Madd.* 64.

Church rate is by prescription,

Church rates depend upon prescription alone, wherefore officers may obtain the name of churchwardens by prescription, though they be not strictly such. 4 *T. R.* 669.

is the subject of ecclesiastical jurisdiction.

A church rate is purely the subject of ecclesiastical jurisdiction; therefore, a *mandamus* to the churchwardens to make such rate will not be entertained. *R.* v. *St. Peter's Thetford*, 5 *T. R.* 364.

But the court of K. B. will put in motion their functions *in ordine ad*, i. e. to assemble in order to inquire and agree whether it be fit that a rate should be made. *R.* v. *St. John's and St. Margaret's Westminster*, 4 *M. & S.* 250. See *ante*, p. 602.

Of a vestry clerk.

It is usual for the vestry to appoint a clerk for the better management of the duty that devolves to them. But this is an office of merely a private nature. It depends altogether on the will of the inhabitants, who may elect a different clerk at each vestry. Neither is any salary annexed to the situation: if the fees are to be paid out of the poor rates, there is an end of all prescriptive right to it. As to any supposed agreement made by the parishioners that such should be an annual office, it cannot be obligatory longer than the parties choose to fulfil it; for it may be revoked at the next vestry. It is not, therefore, a fixed permanent office, for which a *mandamus* will lie. *R.* v. *Churchwardens of Croydon*, 5 *T. R.* 714.

Select vestry.

By custom there may be select vestries of a certain number of persons elected yearly to make rates, and manage the concerns of the parish for that year: and such custom is a good custom. *Read.* Ch. Service. *Gibs.* 246. *Str.* 428.

Two rates; one for the fabric, another for ornaments.

It is holden that a rate for the reparation of the fabric of a church is real, charging the land, and not the person; but a rate for ornaments is personal, upon the goods, and not upon the land. *Gibs.* 220.

In what respects the occupier is chargeable, and who is occupier.

And in *Jeffery's* case, 5 *Rep.* 67. it was solemnly adjudged that the rates for the repair of the church shall be laid upon every occupier of lands in the parish, although such occupier live in another parish; and such person may come to the vestries of the parishioners, and vote in making a rate; but he shall not be charged towards the ornaments of the church, as for bells, repair of seats, bread and wine, clerk's wages, visitation charges, and the like, by reason of such lands; for that the personal estates of the inhabitants are chargeable with every thing that doth not relate to

the fabric of the church, or repairs of the fences of the churchyard, or such other things as concern the freehold.

And therefore some have been of opinion that churchwardens should make two rates; one upon lands and houses, which may concern the freehold of the church, and another upon personal estates and stock, to defray other expenses. But as this method creates confusion, so it is seldom practised.

And Sir *Simon Degge* says, (p. 178.) that he conceives the law to be clear otherwise; and that a foreigner who holds lands in the parish is as much obliged to pay towards the bells, seats, and ornaments, as to the repair of the church; otherwise there would be great confusion in making several levies, which he never observed to be practised within his knowledge. But he leaves it a query among a diversity of opinions.

And Mr. *Shaw*, in his Parish law (p. 92.), having cited the authors who hold these different opinions, says, that the practice generally now goes according to the opinion last mentioned, namely, that foreigners occupying lands within the parish shall be charged to both; and that the ecclesiastical judges, as well as the temporal, for the ease and convenience which accrues from the making of one levy for all, do give countenance thereto, and begin to treat the contrary opinion as obsolete and out of doors.

Equal pound rate.

A taxation by the pound rate is the most equitable way, and not according to the quantity of the land. *Wood's Inst. b.* 1. *c.* 7.

Evidence of custom to pay the church rate in proportions.

An entry of the receipt of money by officers of a township from the officers of another township, of a *proportion* of church rates made in a parish book, is evidence to charge the latter officers with the same proportion in future; and another entry explaining the proportions made on the same page is also admissible evidence, for they refer to each other, and usages relating to parishes must be got out of the parish books. *Stead* v. *Heaton*, 5 *T. R.* 669.

Tenant to be charged.

Where lands are in farm, not the lessor but the tenant shall be rated and pay. *Gibs.* 221.

Impropriator how far chargeable.

An impropriator, though bound to repair the chancel, is also bound to contribute to the reparations of the church, if he hath lands in the parish, which are not parcel of the parsonage. *Id.* 221. 223.

Appeal against the rates.

If any person find himself aggrieved at the inequality of the assessment, his appeal must be to the ecclesiastical judge. *Degge*, 172.

When the amount of assessment does not exceed the sum of 10*l.* he has an appeal to the quarter sessions by stat. 53 *G.* 3. *c.* 127. § 7. See *ante*, p. 603.

And in such case, if he will be relieved, he must show that he is illegally or unequally taxed in respect of the quantity of his land, as being rated for more than he has, or that the land which he hath is over-rated, or that the rate was needless, or that some lands in the parish are omitted in the rate. 1 *Wood's Inst. b.* 1. *c.* 7.

Rates how to be recovered.

If any refuse to pay the rates, being demanded by the churchwardens, they are to be sued for in the ecclesiastical courts, and not elsewhere. *Gibs.* 219. *Degge*, 171.

If the validity of the rate has not been questioned in any ecclesiastical court, and the sum demanded does not exceed 10*l.*,

complaint may be made to one justice. See stat. 53 *G.* 3. *c.* 127. § 7. *ante*, p. 603.

Quakers refusing to pay.

Also a quaker refusing to pay church rates may be sued, as other parishioners, in the ecclesiastical court; or he may be proceeded against before the justices of the peace, in the same manner as for his tithes.

53 G. 3. c. 127.

And by stat. 53 *G.* 3. *c.* 127. § 6. reciting, that whereas by stat. 7 & 8 *W.* 3. it is enacted where any quaker shall refuse to pay for or compound for his great or small tithes, or to pay any church rates, two or more of H. M.'s justices of the peace are authorised to hear and determine the same, not exceeding the value of 10*l.*: and that whereas by 1 *G.* 1. the said act is extended to other objects; and that it is become expedient to enlarge the said sum; it is enacted that all the provisions of the said acts shall be deemed to extend to any value not exceeding 50*l.*: provided always, that one justice shall be competent to receive the original complaint, and to summon the parties to appear before two or more justices of the peace, as in the said act is set forth.

IV. Their Duty as to Repairs; and therein, concerning Church Seats.

Who shall repair.

Of common right, the soil and freehold of the church is the parson's: the use of the body of the church, and the repair of it, common to the parishioners; and the disposing of the seats therein, the right of the ordinary. *Gibs.* 221.

Who may compel the repairs to be made.

The spiritual court may compel the parishioners to repair the body of the church, and may excommunicate every one of them till it be repaired: but those that are willing to contribute shall be absolved, till the greater part agree to a tax. *Read.* Ch. Service.

Difference between adding something new, and repairing the old.

If the churchwardens erect or add any thing new, either to the fabric of the church, utensils, or church-yard, they must have the consent of the parishioners; and if such additions are in the church, the bishop's license is also necessary. But where necessary repairs are wanting, the greater part of the parish will bind the less; and if the major part will not consent where repairs are necessary, the churchwardens may repair without their consent, if upon notice given they refuse to meet, or when they are met, refuse to make a rate. But if a church fall down, the parishioners are not bound to rebuild it. *Read.* Ch. Service. 1 *Vent.* 367.

Majority may rebuild.

But if a church be so much out of repair that it is necessary to pull it down, or so [small] that it needs to be enlarged, the major part of the parishioners may make a rate for new building or enlarging, as there shall be occasion. This was declared in the 29 *C.* 2. by all the three courts successively; notwithstanding the cause was laboured by a great number of quakers who opposed the rate. *Gibs.* 221.

Repairing the chancel.

The parson, that is, the spiritual rector, as also the lay impropriator, is bound by common right to repair the chancel, and is thereupon entitled to the chief seat therein, unless another hath it by prescription; yet he hath not the disposal of the seats therein, but the bishop. *Id.* 223, 224.

Repairing an aisle.

An aisle in a church, which hath time out of mind belonged to a particular house, and been maintained and repaired by the owner

of that house, is part of his frank tenement, and the ordinary cannot dispose of it, or intermeddle in it. *Id.* 221.

A seat, or priority in a seat, in the body of the church, may be prescribed for as belonging to a house, if it hath been used and also repaired time out of mind by the inhabitants of such house. *Gibs.* 221.

Seat inseparable from the house.

And no one can claim a seat in a church by prescription as appendant or belonging to land; but it must be laid as belonging to a house, in respect to the inhabitancy thereof. 1 *Wood's Inst. b.* 1. *c.* 7.

Nor can he claim such a seat by length of possession only, without claiming it as appurtenant to a messuage. 1 *T. R.* 428.

Nor can a seat be granted to a person and his heirs absolutely; for the seat doth not belong to the person, but to the inhabitant. *Gibs.* 221. *Poph.* 140. *T. Raym.* 246.

But if a faculty be annexed to a messuage, it may be transferred with the messuage to another person. 1 *T. R.* 431.

Mainwaring, Bart. v. *Giles, H.* 2 *G.* 4. 5 *B. & A.* 356. An action at common law will not lie for disturbing another in the possession of a pew, unless the pew be annexed to a house in the parish.

V. Their Duty as to sundry other Matters.

By stat. 43 *El. c.* 2. § 1. Every churchwarden is an overseer of the poor, although every overseer of the poor is not a churchwarden.

Churchwarden is an overseer.

And in *M.* 15 *C.* 2. A churchwarden was committed by the two next justices, *as churchwarden,* for refusing to account for the money received and disbursed by him; but on an *habeas corpus* he was discharged; because by the warrant of commitment it ought to appear that he was overseer of the poor, for by the statute of 43 *El.* that is annexed to his office of churchwarden, and the justices have no jurisdiction over him as churchwarden, but as overseer. *Dalt.* 186.

But not under the justices' jurisdiction, except as overseer.

They are to see that the church ways be well kept and repaired. And the right to a church way may be claimed and maintained by a libel in the spiritual court. 2 *Roll. Abr.* 287.

Church way.

Churchwardens have the care of a benefice during its vacancy. Having first taken out a sequestration from the spiritual court, they are to manage all the profits and expenses of the benefice for him that shall next succeed; plough and sow his glebe; take in the crop; collect tithes; thrash out and sell corn; repair houses and fences, and the like. And they shall take care that during the vacancy the church shall be duly served by a curate approved by the bishop, whom they are to pay out of the profits of the benefice. And if the successor thinks himself aggrieved by them, he may appeal to the ecclesiastical judge. *Par. L.* 99. *Com. Par. Off.* 90.

Vacancy.

They (or the constable) shall levy the penalties for persons exercising their worldly calling on the Lord's day. 29 *C.* 2. *c.* 7.

Worldly calling on the Lord's day.

They shall suffer no plays, feasts, banquets, suppers, church ales, drinkings, temporal courts or leets, lay juries, musters, or any profane usage, to be kept in the church or church-yard. *Can.* 88.

Profanation of the church.

Profanation of the church.

The duty of maintaining order and decorum in the church, lies *immediately* upon the churchwardens, and if they are not present, or being present do not repress any indecency, they desert their proper duty. *Per Sir William Scott*, *Cox* v. *Goodday*, 2 *Hagg. Rep*. 141.

Attending divine service.

They shall see that the parishioners resort to church, and continue there orderly during divine service; and shall present the defaulters. *Can*. 90.

Loitering in the church-yard.

They shall not suffer any idle persons to abide either in the church-yard, or church-porch, during the time of divine service, or preaching; but shall cause them to come in or to depart. *Can*. 19.

Levying 12*d*. a Sunday for not coming to church.

They shall levy the forfeiture of 12*d*. a Sunday, on the goods of persons not coming to church. 1 *El*. *c*. 2.

Sports on the Lord's day.

They (or the constable) shall levy the penalty of 3*s*. 4*d*. for using unlawful pastimes on the Lord's day. 1 *C*. *c*. 1.

Recusants.

They shall, on pain of 20*l*., present at the sessions once a year the monthly absence from church of all recusants, and the names and ages of their children above nine years old, and the names of their servants. And if the party presented shall be indicted and convicted, the churchwardens shall have a reward of 40*s*. to be levied of the rescusant's goods, by warrant of the justices in sessions. 3 *J*. *c*. 4.

Excommunicated persons.

They shall keep excommunicated persons out of the church. *Can*. 85.

Ornaments of the church.

They shall take care to have in the church a large bible, book of common prayer, book of homilies, a font of stone, a decent communion table, with proper coverings, the ten commandments set up at the east end, and other chosen sentences upon the walls, reading-desk, and pulpit, and chest for alms; all at the charge of the parish. *Can*. 80, 81, 82, 83, 84.

Bells.

They ought to keep the keys of the belfry, and to take care that the bells be not rung without good cause, to be allowed by the minister and themselves. *Can*. 88.

52 G.3. c.146. Registers.

By stat. 52 *G*. 3. *c*. 146. § 2. Churchwardens or chapelwardens are to furnish register books, adapted to the forms prescribed by the act, at the expense of their parish or chapelry, whenever required by the rector, vicar, curate, or officiating minister to provide the same. Such books to be of paper unless required to be of parchment by such churchwardens or chapelwardens.

By § 5. They are to provide and keep in repair, at the expense of the parish or chapelry, a dry well-painted iron chest for the safe and secure keeping such register books.

By § 6. They are to make fair copies (if duly appointed so to do by the rector, vicar, &c.) of all the entries in the register book annually at the expiration of two months after the end of each year, and to attest the verification of the same by the rector, vicar, &c.

By § 7. They are to transmit such annual copies to the register of the diocese, by the post, on or before the 1st of *June* in each year.

By § 9. In case of neglect or refusal of the officiating minister to verify copies of the register books, they are to certify the default to the registrar of the diocese.

And such register, being carefully preserved, is good evidence; and the falsifying of it is punishable at the common law. *Gibs*. 229.

They shall at the charge of the parish, with the advice and direction of the minister, provide bread and wine against the communion. *Can.* 20. Communion.

They (or the overseers) shall levy the penalty of 5*l.* for an incumbent not reading the common prayer once a month. 13 & 14 *C.* 2. *c.* 4. § 7. Incumbent.

They shall collect money on charity briefs, on pain of 20*l.* 4 *Ann. c.* 14. Charity briefs.

They shall not suffer any strangers to preach but such as shall appear qualified on shewing their licence; and they shall see that such preachers register and subscribe their names in a book to be kept for that purpose, with the day when they preached, and the bishop's name who granted the licence. *Can.* 50, 52. Strange preachers.

Persons who murder themselves, or die excommunicated, are denied christian burial; and therefore the churchwardens are not to suffer them to be buried in the church or church-yard, without special licence from the bishop. *Degge*, 183. but see as to suicides, stat. 4 *G.* 4. *c.* 52. § 1, 2. *ante, tit.* Burial. Persons denied christian burial.

They shall levy the penalties for eating flesh on fish days. 5 *El. c.* 5. Eating flesh on fish days.

They shall receive the penalties for tippling and drunkenness. 4 *J.* 1. *c.* 5. 21 *J* 1. *c.* 7. Drunkenness.

They shall receive the penalties for hawking spirituous liquors. 9 *G.* 2. *c.* 23. Spirituous liquors.

They (or the overseers) shall receive the penalties relating to butter and cheese. 13 & 14 *C.* 2. *c.* 26. Butter and cheese.

They, together with the minister, are to sign certificates for the out-pensioners of *Greenwich* hospital, residing within their parish, with respect to the identity of their persons, in order to the receiving of their pensions. 3 *G.* 3. *c.* 16. Greenwich hospital.

They (or the overseers) shall pay to the high constables the general county rate, out of their money collected for the poor. 12 *G.* 2 *c.* 29. County rate.

They shall receive the penalty for servants carelessly firing houses. 6 *Ann. c.* 31. Servants firing houses.

They shall receive the penalties for tracing hares in the snow, (and other game penalties.) 1 *J. c.* 27. Tracing hares.

They shall join with the constable and surveyor of the highways in choosing and returning new surveyors. 13 *G.* 3. *c.* 78. Surveyors of the highways.

There are numerous other instances in which churchwardens are appointed by statute to receive certain penalties, &c. and to act in other matters, but it is not necessary to state them here.

VI. Of Presentments; and therein, concerning Sidesmen or Assistants.

Churchwardens by their oath are to present or certify to the bishop, or his officer, all things presentable by the ecclesiastical laws, which relate to the church, minister, and parishioners. Oath to present.

The articles delivered to them for their direction are for the most part founded on the book of canons made in the year 1603, and the rubricks of the common prayer. Book of articles.

Statute presentments.

There are also several things which they are bound to present by act of parliament: as tippling or drunkenness, by stat. 4 *J.* 1. *c.* 5.; recusants by stat. 3 *J.* 1. *c.* 4.

When to present.

They may present as often as they please, but shall not be obliged above once a-year where it hath so been used, and not above twice any where; except it be at the bishop's visitation. *Can.* 116, 117.

Fee for taking presentments.

For the presentments of any church or chapel for one year the register shall have only 4*d.* *Can.* 116.

Minister may present.

The minister may present where the churchwardens neglect. *Can.* 113. But such presentment ought to be upon oath. 2 *Vent.* 42.

Sidesmen.

In larger parishes, there are officers called sidesmen (anciently synodsmen, otherwise called questmen,) to assist the churchwardens in their inquiries and presentment of offenders. They shall be chosen yearly in *Easter* week by the minister and parishioners, if they can agree; if not, by the bishop. *Can.* 90.

Sidesman's oath.

The sidesman's oath, said to have been agreed on by the civilians and common lawyers, is this:

You shall swear that you will be assistant to the churchwardens in the execution of their office, so far as by law you are bound. So help you God. Gibs. 242.

VII. Their Accounting.

When to account.

At the end of the year, or within a month after at most, they shall before the minister and parishioners (at a vestry) give up a just account of such money as they have received, and also what they have particularly bestowed in reparations, and otherwise, for the use of the church; and shall deliver up to the parishioners the money and parish goods in their hands, to be delivered over by them to the next churchwardens by bill indented. *Can.* 89.

How compelled to account.

If they refuse, they may be presented at the next visitation by the new churchwardens; or any of the parish that are interested may, by process, call them to account before the ordinary: or the succeeding churchwardens may have a writ of account at common law. And if they have disbursed more than they have received, the succeeding churchwardens shall pay what is due to them, and account it among their disbursements. 1 *Roll. Abr.* 121.

And churchwardens *de facto* may maintain an action against a former churchwarden, for money received by him for the use of the parish, though the validity of the election of the plaintiffs to the office be doubtful, and though they be not the immediate successors of the defendant; for the defendant who was a wrong doer in withholding the money, shall not be permitted to deny their right to bring the action, and churchwardens being a corporation for the purpose of taking care of the goods of the church, the right to sue for money withholden from the parish passed from one set to the other; it being perfectly immaterial, whether the immediate or any other successors of the defendant brought an action which was not founded in privity between them. *Turner* v. *Barnes*, 2 *H. Bla.* 559.

Power of the spiritual court.

In the case of *Leman* v. *Goulty and another*, 3 *T. R.* 3. it was determined, that although the spiritual court may compel the

churchwardens to deliver in their accounts, they cannot decide on the propriety of the charges made therein: and when they had delivered in their accounts, they had done every thing which that court had the power of enforcing, and there was an end of their jurisdiction; it was *functus officio*; and if they take any steps afterwards, it is an excess of jurisdiction for which a prohibition will be granted even after sentence.

Accounting to a select vestry.

If the custom of the parish is for a certain number of persons to have the government thereof, and the account is given up to them; the custom is a good custom, and the account given to them a good account. *Gibs.* 242.

Vouchers.

Mr. *Barlow* says, that for disbursements of any sum not above 40*s.* their own oath is held sufficient proof; but for all sums above, receipts must be produced. But it may be more satisfactory if receipts be produced for all. *Barl.* 105.

Allowance of the account.

The allowance of the account may be by entering it in the church book of accounts, and having it signed by those in the vestry who allow the accounts. *Barl.* 105.

Account allowed final.

When they have faithfully accounted, and their account is allowed by the minister and major part of the parishioners present, it shall not afterwards be in the power of any to make them account again; unless some fraud in their accounts is afterwards discovered. 1 *Wood's Inst. b.* 1. *c.* 7.

Wainwright v. *Bagshaw*, 2 *Str.* 974. 1133. The churchwardens were cited into the court of *Lichfield* to account. They pleaded, that they had accounted at the vestry according to law. Which plea was rejected; and thereupon a prohibition was granted; for the ordinary is not to take the account, he can only give a judgment that they do account; and to what purpose should they be sent back to those who have taken their accounts already.

VIII. Their Punishment on Misbehaviour.

Churchwardens committing.

If the churchwardens waste the goods of the church, the new churchwardens may call them to an account before the bishop, or bring their action at common law. *Read.* Ch. Service.

Parishoners may be evidence against them

By stat. 3 *W.* 3. *c.* 11. § 12. Reciting, whereas many churchwardens and overseers, and other persons entrusted to receive collections for the poor, and other public monies relating to the churches and parishes whereunto they belong, do often mispend the same, to the prejudice of such parishes, and of the poor and other inhabitants thereof; and the parishioners, who are the only persons sometimes who can make proof thereof, have not been allowed to be witnesses against them; it is enacted, that in all actions to be brought in any court at *Westminster*, or at the assizes for the recovery thereof, the evidence of the parishioners, other than such as receive alms, shall be taken and admitted.

Not answerable for indiscretion.

But churchwardens are not answerable for indiscretion, but for deceit only, if they lay out more money than is needful. 1 *Wood's Inst. b.* 1. *c.* 7.

[N. B. For their punishment for disobeying orders of justices when acting as *Overseers of the Poor*, or *Parish Officers*, see *Penalty on Overseers for neglect of their duty*: Title Poor. Vol. IV.

IX. Their Indemnity on doing their Duty.

7 J. 1. c. 5.
21 J. 1. c. 12.
Double costs.

By stats. 7 *J.* 1. *c.* 5. 21 *J.* 1. *c.* 12. If any action be brought against any churchwardens, or persons called sworn men, executing the office of churchwarden, for any thing done by virtue of their office, they may plead the general issue, and give the special matter in evidence; and if a verdict is given for them, or the plaintiff shall be nonsuit, or discontinue, in every such case the judge before whom the said matter shall be tried shall allow to the defendant his double costs.

In order to entitle the defendant to double costs under this act, there must be a certificate of the judge who tried the cause, that the action was brought against the defendant for something done by him in the execution of his office. But the judge is bound to grant such certificate, and it may be signed at any time after the trial. *Harper* v. *Carr*, 7 *T. R.* 448.

In *Kerchival's* case, *Cro. Car.* 285, 286. an action was brought against the churchwardens for a presentment upon common fame of incontinency. Upon not guilty it was found for the churchwardens, and moved that they might have double costs. But it was resolved, that this being merely ecclesiastical, it is not within this statute; for that the statute was never intended, but where they shall be vexed concerning temporal matters, which they shall do by virtue of their office, and not for presentments concerning matters of fame.

Where a churchwarden is sued for taking a distress for a poor rate under a warrant of magistrates, he is entitled to the protection given to magistrates and other officers by stat. 24 *G.* 2. *c.* 44. *Harper* v. *Carr*, 7 *T. R.* 270. *Nutting* v. *Jackson*, *Bull. N. P.* 24.

And, therefore, if such an action be brought against him alone, without making the magistrates defendants also, he is entitled to a verdict on proving the warrant of the magistrates. *Id.*

A.

A. Complaint. (*a*)

County of ——— to wit. } *The information and complaint of* A. I., *one of the churchwardens of the parish of* ———, *in the said county, taken before me* J. P., *one of his majesty's justices of the peace for the said county, the* ——— *day of* ———, *in the year of our Lord,* 18—. *who on his oath saith, That* ———, *of* ———, *hath refused, and still doth refuse to pay to him the said* A. I. (*as such churchwarden as aforesaid,*) *the sum of* ———, *being the sum duly rated and assessed in the churchwardens' rate, made the* ——— *day of* ——— *last, and which is now justly due from him the said* ——— *unto him the said* A. I. *as such churchwarden, and this informant prayeth justice in the premises.*

Sworn before I. A.

(*a*) One justice may receive the complaint and grant the summons. Vide *ante*, stat. 53 G. 3. c. 127. § 7. p. 603.

B. Summons.

B.

County of — to wit. } To all constables and others, his majesty's officers of the peace for the county of ——.

WHEREAS ——, *of* ——, *in the county aforesaid, in the parish of* ——, *in the said county, hath refused to pay unto* ——, *churchwarden of the parish aforesaid, the sum of* ——, *duly rated and assessed in the churchwardens' rate, made the* —— *day of* ——, *in the year of our Lord one thousand eight hundred and* ——, *which is now justly due from the said* —— *unto the said* ——. *These are, therefore, to authorise and require you forthwith to summon the said* —— *to appear before us, at* ——, *in the said county of* ——, *on the* —— *day of* ——, *at the hour of eleven in the forenoon of the same day, to answer unto the said complaint : and be you then there to certify what you shall have done in the premises. Given under our hands and seals, at* ——, *in the said county, the* —— *day of* ——, *one thousand eight hundred and* ——.

Vide ante, p.485.
One justice may receive the complaint and issue the summons.

C. Order.

C.

County of — to wit. } *WHEREAS complaint hath been made unto us* —— *and* ——, *esquires, two of his majesty's justices of the peace in and for the said county, by* —— *churchwardens of the parish of* ——, *in the said county, that* —— *of* —— *aforesaid, in the county aforesaid,* —— *hath refused to pay the sum of* ——, *duly rated and assessed in the churchwardens' rate, made the* —— *day of* ——, *in the year of our Lord one thousand eight hundred and* ——, *and justly due unto him the said* ——.

We, therefore, the said justices, being neither of us patron of the parish church of —— *aforesaid, nor any way interested in any of the rights, dues, or other payments belonging to the parish church of* —— *aforesaid, having duly summoned the said* —— *before us, and having also duly examined the truth of the said complaint upon oath, do find that there is justly due the aforesaid sum of* —— *from him the said* —— *to him the said* ——, *and do order and appoint the aforesaid* —— *to pay, or cause to be paid unto him the said* —— *the aforesaid sum of* ——, *and we do also order and appoint the aforesaid* —— *to pay, or cause to be paid unto him the said* ——, *the further sum of* ——, *for such costs and charges concerning the premises as upon the merits of the cause do appear to us just and reasonable. Given under our hands and seals, at* ——, *in the said county, the* —— *day of* ——, *in the year one thousand eight hundred and* ——.

D.

D. Warrant to levy.

County of ——— to wit. } To the constable of ———.

WHEREAS upon the complaint of A. I., *churchwarden of the parish of* ———, *in the said county of* ———, *of the parish of* ——— *aforesaid, in the said county, hath been duly summoned to appear before us* J. P. *and* W. P. *esquires, two of his majesty's justices of the peace in and for the said county,* (*neither of us being patron, &c.*) *to be examined for nonpayment of the churchwardens' rate, due unto him the said* ———, *from* ——— *the said* ———. *And whereas we the said justices have by a writing under our hands and seals, ordered* ——— *the said* ———, *to pay unto him the said* ———, *the sum of* ———, *duly rated and assessed in the churchwardens' rate, made the day of* ———, *one thousand eight hundred and* ———, *and justly due unto him the said* ———, *and moreover the sum of* ——— *shillings for the charges of him the said in recovering the same, making in the whole the sum of* ———. *And whereas it appeareth unto* ———, *that the said* ——— *hath had due notice of the said order, but hath refused, and doth refuse to pay, and hath not paid the said sum of* ———, *nor any part thereof.*

These are, therefore, to authorise and command you, that you do forthwith levy the aforesaid sum of ———, *by distress and sale of the goods and chattels of* ——— *the said* ———, *and out of the money arising from such sale, that you do pay or cause to be paid unto the said* ——— *the said sum of* ———, *and thereout also deduct your necessary charges of distraining; and if any overplus shall remain after such payment and deduction as aforesaid, that you do render the same unto* ——— *the said* ———. *Given under our hands and seals this* ——— *day of* ———, *A. D.* 18—.

Clergy.

§ I. *Clergymen.*

[52 H. 3. c. 10. — 9 Ed. 1. c. 3. — 13 Ed. 1. st. 4. — 9 Ed. 2. c. 3. — c. 9. — 50 Ed. 3. c. 5. — 1 H. 7. c. 4. — 43 El. c. 2. — 13 & 14 C. 2. c. 4.

II. *Benefit of Clergy.*

I. Clergymen.

Liable to the poor,

BY stat. 43 *El. c.* 2. clergymen are liable to the poor rates for their glebe and tithe.

and to the highways.

Mr. *Hawkins* says, clergymen are within the purview of the statutes relating to the repair of highways, in respect of their spiritual possessions, as much as any other person whatsoever in respect of any other possessions; for the words are general, and

there is no kind of intimation therein that any particular persons shall be exempted more than others. 1 *Haw.* *c.* 76. § 15.

[By the general highway act indeed they are expressly made liable in respect of their *tithes*, &c. 13 *G.* 3. *c.* 78. § 34. 35. 45. 46.]

And it seems now to be generally settled, that clergymen are liable to all public charges imposed by act of parliament, where they are not specially excepted.

And to other public charges.

See the stat. 57 *G.* 3. *c.* 99. by which the laws relating to clergymen holding farms, and for enforcing residence on their benefices, and for the support of stipendiary curates in *England*, are consolidated and amended. The provisions of this comprehensive statute, however important to that most respectable class of the community, the clergy, being in no way relative to the duties of a magistrate, or parish officer, do not come within the scope of this work. See *Burn's Eccl. Law.* 8th Ed. by *Tyrwhitt*, tits. PRIVILEGES AND RESTRAINTS OF THE CLERGY, RESIDENCE, PUBLIC WORSHIP, &c.

Privileges against an assault.

A person laying violent hands on a clergyman may be punished in the ecclesiastical court. 13 *Ed.* 1. *st.* 4. 2 *Inst.* 492.

And assaults on clergymen are inquirable before the king's courts. 9 *Ed.* 1. *c* 3.

May have the benefit of clergy more than once.

Clergymen in holy orders may have the benefit of clergy a second or third time, or oftener. 2 *Hale*, 374. 375.

Shall not be burnt in the hand.

A clerk in holy orders shall not be burned in the hand, but shall have the same privilege as if he had been burned in the hand; and therefore shall not be drawn in question in the ecclesiastical court to deprive him, or inflict any ecclesiastical censure upon him. 2 *Hale*, 389.

Shall not serve in temporal offices.

To the intent that clergymen may the better discharge their duty in celebration of divine service, and not be entangled with temporal business, if any of them be chosen to any temporal office, he may have his writ to be discharged. 1 *Inst.* 96.

Shall not serve in war.

Ecclesiastical persons have this privilege, that they ought not in person to serve in war. 2 *Inst.* 4.

Need not appear at the torn.

Ecclesiastical persons are not bound to appear at the torn, or view of frankpledge. 52 *H.* 3. *c.* 10. 9 *Ed.* 2. *c.* 3. 2 *Inst.* 4.

Shall not be arrested in the church.

No clergyman shall be arrested in any church or church-yard, whilst he attends to divine service, on pain of imprisonment of the offender, and ransom at the king's will, and free [satisfaction] to the party arrested. 50 *Ed.* 3. *c.* 5. 1 *R.* 2. *c.* 15.

But the arrest notwithstanding (if not on a Sunday) is good in law. *Watson*, *c.* 34. p. 344.

Exemption from duties on horses.

The exemptions from the duty on horses imposed by stat. 43 *G.* 3. *c.* 161. extend to any rector, vicar, or curate, actually doing duty in the church or chapel of which he is rector, vicar, or curate, not possessed of 60*l.* *per ann.*, whether arising from ecclesiastical preferment or otherwise; and not keeping more than one horse, mare, or gelding, for the purpose of riding, which otherwise would be chargeable within the act; except such person who shall occasionally perform the duty without being the regular officiating minister *Case* 7. *Sched.* (F.)

Every ecclesiastical person not possessed of 100*l.* annual income from preferment or otherwise, is exempted from duty on any horse used only to draw a two-wheel tax cart. See stats. 48 *G.* 3. *c.* 55. 52 *G.* 3. *c.* 93. Sched. E. No. 1.

II. Benefit of Clergy.

1. Original of the Benefit of Clergy.

Original of the benefit of clergy.

ANCIENTLY princes and states, converted to christianity, in favour of the clergy, and for their encouragement in their offices, and employments, and that they might not be so much entangled in suits, did grant to the clergy very bountiful privileges and exemptions; and particularly, an exemption of their persons from criminal proceedings, in some capital cases, before secular judges; which was the true original of the benefit of clergy. 2 *Hale*, 323.

The clergy increasing in wealth, power, honour, number, and interest, afterwards set up for themselves, and that which they obtained by the favour of princes and states at first, they now began to claim as their right, and a right of the highest nature, namely, by the law of God; and by their canons and constitutions endeavoured, and in some places obtained, vast extensions of these exemptions, both with regard to the persons concerned, to wit, not only to persons in holy orders, but also to all that had any kind of subordinate ministration relative to the church; and likewise in respect of the causes, exempting as far as they could all causes of clergymen, as well civil as criminal, from the jurisdiction of the secular power, and wholly subordinating them immediately and only to the ecclesiastical jurisdiction, which they supposed to be lodged first in the pope by divine right and investiture from Christ, and from the pope shed abroad into all subordinate and ecclesiastical jurisdiction. 2 *Hale*, 324.

And by this means they endeavoured, and in some kingdoms and for some ages obtained, that there was a double supreme power in every kingdom; the one ecclesiastical, absolute and independent upon any but the pope over ecclesiastical men and causes; and the other secular, of the king, or civil magistrate.

But this claim of exemption, although it obtained much in this kingdom, yet grew so burdensome, that it was from time to time qualified and abridged by the civil power, sometimes by acts of parliament taking it away in some cases, sometimes by the interpretation and construction of the judges, and sometimes by the contrary usage of the kingdom; for ecclesiastical canons never bound in *England* farther than they were received, and so had not their authority from their own strength and obligation, but from the usages and customs of the kingdom that admitted them, and only so far forth as they were so admitted. 2 *Hale*, 325.

And therefore if they were indicted in cases criminal, but not capital, nor wherein they were to lose life or limb, there the privilege of clergy was not allowed; and therefore *not in indictments of trespass or petit larceny.* 2 *Hale*, 325.

Also it was not allowed them in high treason.

But at the common law, in all cases of felony or petit treason, clergy was allowable, excepting two, lying in wait, and burning of houses, which were looked upon as hostile acts, and the authors of them therefore not entitled to the common privileges of subjects. 2 *Hale*, 330.

2. By what Persons it may be demanded: and herein, how the right of it shall be disproved; and of the pleading.

Who may demand it. Others besides clergymen.

By a favourable interpretation of the statutes relating to the benefit of clergy, not only those actually admitted into some inferior order of the clergy, but also those who were never qualified to be admitted into orders (which was formerly tried by putting them to read a verse), have been taken to have a right to this privilege, as much as persons in holy orders. 2 *Haw. c.* 33. § 5.

Women.

But by the common law a woman could not have the benefit of clergy: but now by the statute of 3 *W. c.* 9. a woman, convicted or outlawed for any felony for which a man might have his clergy, shall, upon praying the benefit of that statute, be subject only to such punishment as a man would be in the like case.

Heretics, Jews, Turks, persons excommunicate.

Ld. *Hale* says, a person convicted of heresy, a Jew or a Turk, shall not have their clergy; but a person excommunicate shall have his clergy. 2 *Hale*, 373.

But by stat. 5 *Ann. c.* 6., which abolished the ceremony of reading, the wall of partition (as Sir *Michael Foster* expresses it) between subject and subject under one and the same degree of guilt, is taken away; and from this period the measure of punishment hath been governed by the degrees of real guilt, and not by the function or abilities of the offender. *Fost.* 306.

But Mr. J. *Blackstone* observes, that it hath been said that Jews, and other infidels and heretics, were not capable of the benefit of clergy till after stat. 5 *Ann. c.* 6. as being under a legal incapacity for orders. But he questions whether this was ever ruled for law, since the re-introduction of the Jews into *England* in the time of *Oliver Cromwell:* for, if that were the case, the Jews are still in the same predicament, which every day's experience will contradict; the statute of *Ann.* having certainly made no alteration in this respect; it only dispensing with the necessity of reading in those persons, who, in case they could read, were, before the act, entitled to the benefit of their clergy. 4 *Blac. Com.* 373.

Persons having had clergy once.

By stat. 4 *H.* 7. *c.* 13. Every person (not being within orders) who hath once been admitted to his clergy, shall not be admitted to the same a second time.

Burning in the hand.

And by stat. 4 *H.* 7. *c.* 13. if he is convicted of murder, he shall be marked (unless he is a peer, 2 *Hale*, 376.) with an M on the brawn of the left thumb; and if for any other felony, with a T.

Burning not a conclusive proof of the conviction.

But he shall not be ousted of his clergy, by the bare mark in his hand, or by a parol averment, without the record testifying it, or a transcript thereof (according to the following statutes.) 2 *Hale*, 373.

And therefore the burning in the hand seemeth now to be of little use, and (as Sir *Michael Foster* observes) can scarcely be called even so much as a slight punishment; but rather a piece of absurd pageantry, tending neither to the reformation of the offender, nor for example to others; to wit, burning the offender in the hand with an iron scarcely heated. *Fost.* 372.

34 & 35 H. 8. c. 14. Conviction how to be certified.

By stat. 34 & 35 *H.* 8. *c.* 14. The clerk of the crown, or of the peace, or of the assize, shall certify a transcript briefly of the tenor of the indictment, outlawry, or conviction and attainder, into the K. B. in forty days: and the clerk of the crown, when the judges of assize or justices of the peace write to him for the names of such persons, shall certify the same, with the causes of the conviction or attainder.

3 W. c 9. How it may be otherwise certified.

Another method is given by stat. 3 *W.* *c.* 9. § 7., which enacts, that the clerk of the crown, clerk of the peace, or clerk of the assize, where a person admitted to clergy shall be convicted, shall, at the request of the prosecutor, or any other on the king's behalf, certify a transcript briefly, and in few words, containing the effect and tenor of the indictment and conviction, of his having the benefit of clergy, and the addition of the party, and the certainty of the felony and conviction, to the judges where such person shall be indicted for any subsequent offence.

How tried whether he is the same person.

Also it seems that if the party deny that he is the same person, issue must be joined upon it, and it must be found upon trial that he is the same person, before he can be ousted of clergy. 2 *Hale*, 373.

A prisoner who is a second time convicted of felony, and prays his clergy, but who has prayed and has had his clergy once allowed him, may be debarred of it on the second conviction by means of a *counterplea* stating the fact. *R.* v. *Scott et al.* 1 *Leach*, 401. *R.* v. *Dean*, 1 *Leach*, 476. 2 *Haw*, 8vo. *edit.* 478. 479.

3. In what Cases it may be demanded.

Formerly allowed in all felonies.

By stat. 25 *Ed.* 3. *st.* 3. *c.* 4. All manner of clerks, who shall be convicted before the secular judges for any treasons or felonies, touching other persons than the king himself, shall have the privilege of the holy church.

But not in treason or petit larceny.

Clergy was never allowed in this nation in cases of high treason, nor is it allowed on indictments of petit larceny or trespass; but by the above recited act clergy was allowed in all treasons and felonies, except treason against the king: so that after this statute the benefit of clergy might be pleaded and allowed in all other treasons and felonies. *Hale's Sum.* 230. 2 *Hale*, 326.

Clergy taken away by statutes.

Consequently, wherever clergy is not allowable in any other cases, it is taken away by some subsequent act of parliament. *Hale's Sum.* 230.

Allowed in new felonies, unless expressly taken away.

Consequently, where a new felony is made by an act of parliament, clergy is to be allowed, unless expressly taken away by such statute. *Id.*

And if it make a new felony, and take away clergy not generally, but in such or such cases, regularly in other cases, clergy is allowable. 2 *Hale*, 335.

But if the statute enact generally, that it shall be felony without benefit of clergy, or that he shall suffer as in case of felony, with-

out benefit of clergy, this excludes it in all circumstances, and to all intents. 2 *Hale*, 335.

Therefore where clergy is excluded, the indictment must bring the offence within the statute.

It follows further from what hath been said, that in all cases, where an act of parliament ousteth clergy in case of any felony, the indictment must precisely bring the party within the case of the statute; otherwise, although possibly the fact itself be within the statute, and it may so appear upon the evidence, yet if it be not so alleged in the indictment, the party, though convict, shall have his clergy. 2 *Hale*, 336.

But although the case be so laid in the indictment that it comes within the statute to exempt the prisoner from clergy, yet if upon the evidence it fall out that though it be a felony, yet it is not so qualified as laid in the indictment, the jury ought to find him guilty of the felony simply, but not as to the matter laid in the indictment, and thereupon the prisoner shall be admitted to his clergy; and this is commonly done. 2 *Hale*, 366.

Indictment on a statute which ousteth of clergy an offence which was felony at common law.

But if the offence was capital at the common law, and a statute only exclude it from clergy, the indictment, in such case, need not conclude *against the form of the statute*, because the statute doth not alter the nature of the offence, but leaves it to its proper judgment, and only takes away a personal privilege of exemption from such judgment. 2 *Haw. c.* 33. § 25.

Accessary.

Furthermore, from what hath been observed above, it follows, that where an act taketh away clergy from the principal, and saith nothing of the accessary, the accessaries, as well *before* as *after*, shall have their clergy. 11 *Rep.* 37. *Fost.* 355. Neither doth a statute excluding the accessaries thereby exclude the principals.

4. At what Time it must be demanded.

To be demanded after conviction.

By the ancient common law, the benefit of clergy was demanded as soon as the prisoner was brought to the bar, before any indictment or other proceeding against him; but this was found a great inconvenience to the prisoner, because possibly he might have been acquitted of the felony: or if not, yet in case of inquest of office he lost his challenges to such inquest, and yet, upon such inquest found he forfeited his goods and the profits of his lands; and, therefore, *Prisot* C. J., with the advice of the other judges, in the reign of *H.* 6. for the safety of the innocent, would not allow the prisoner the benefit of clergy before he had pleaded to the felony, and (having the benefit of his challenges and other advantages) had been convicted thereof; which course hath been generally observed ever since. 2 *Inst.* 164. 2 *Hale*, 378.

May be allowed though not demanded.

And this benefit of clergy may be allowed by the court in discretion, though the party challenge it not. *Hale's Sum.* 239.

5. Effect of Clergy allowed.

Persons having their clergy may be continued in gaol.

Persons admitted to their clergy may be continued in prison as a further punishment, not exceeding one year. 18 *El. c.* 7.

May be transported.

And by stat. 4 *G.* 1. *c.* 11. Persons convicted of offences within benefit of clergy (except persons convicted for receiving or buying of stolen goods) may, instead of being whipped or burned in the hand, be transported for seven years, if the court shall think fit.

19 G. 3. c. 74.

May be fined or whipped.

And by stat. 19 *G.* 3. *c.* 74. § 3. When any person shall be convicted of any felony within the benefit of clergy, for which he shall be liable to be burned in the hand, the court or any court holden at the same place, with the like authority, may, if they think fit, instead thereof, impose upon the offender a moderate pecuniary fine; or otherwise, instead of such burning, except in case of manslaughter (*a*), may order the offender to be once or oftener, but not more than thrice, either publicly or privately whipped, such private whipping to be in the presence of not less than two persons besides the offender and the officer who inflicts the same: and in case of female offenders, in the presence of females only.

(*a*) See stat. 3 G. 4. c. 38. § 1. tit. Homicide. Vol. II.

§ 4. Provided, that this shall not extend to deprive the court of the power now vested in them, of detaining such offender in prison for any time not exceeding one year, or of committing him to the house of correction or other public workhouse, to be kept to hard labour for any time not less than six months, nor exceeding two years; but such person, after such burning, or after such whipping or fine, may be so detained or committed, and with such accumulated punishment, in case of escape from such house of correction, or workhouse, as if this act had not been made.

Shall forfeit their goods.

A person admitted to his clergy forfeits all his goods that he hath at the time of the conviction. 2 *Hale*, 388.

But not lands.

But presently, upon his burning in the hand, he ought to be restored to the possession of his lands, and from thenceforth to enjoy the profits thereof. 2 *Hale*, 388.

Credit restored.

Also it restores him to his credit; and consequently enables him to be a good witness. 2 *Haw. c.* 33. § 129.

31 G. 3. c. 35.

And now by stat. 31 *G.* 3. *c.* 35. Persons convicted of petit larceny are, after their punishment, made competent witnesses, as well as those convicted of grand larceny.

After burning, or its substitute, or pardon, he is discharged for ever of that and all other felonies before committed, within the benefit of clergy; but not of felonies from which such benefit is excluded: and this by stats. 3 *Eliz. c.* 4. and 18 *Eliz. c.* 7. 4 *Blac. Com.* 374.

W. J. committed an act which occasioned the deaths of two persons. Before the survivor's death he was found guilty of the manslaughter of the first, and received his clergy. This allowance protected him on his subsequent conviction of the manslaughter of the second.

William Jennings was indicted for the murder of *Mary Ann Condon*, tried before *Park* J. at the *O. B. April Sessions*, 1819, and convicted of manslaughter. The prisoner had been tried at the previous *February Sessions*, before Mr. Baron *Graham*, for the murder of *Mary Cormack*, and was also then convicted of manslaughter, and received the benefit of clergy. The act which occasioned the death of the two children was one and the same; but *Mary Ann Condon* was not dead when the prisoner was tried, and received the benefit of clergy for killing *Mary Cormack*. *Park* J. respited judgment, upon a doubt arising, whether, as the prisoner had previously received the benefit of clergy for the same act, he could then receive a punishment for the death which had taken place subsequently to his former trial, and this doubt was submitted for the opinion of the learned judges. The judges assembled (ten) were unanimous that the allowance of clergy upon the first conviction protected the prisoner upon the *second*, and that if he were called up for judgment, he ought to rely upon that allowance as a bar. *MS. C. C. R.*

Clerk of the Peace.

[37 H. 8. c. 1.— 22 & 23 C. 2. c. 22.— 1 W. 3. sess. 1. c. 21.—4 & 5 W. c. 24. — 10 & 11 W. c. 23.—3 G. c. 15.— 22 G. 2. c. 46.— 55 G. 3. c. 49, c. 50. — 57 G. 3. c. 91. — 5 G. 4. c. 61.]

BY stat. 1 *W.* sess. 1. *c.* 21. § 5. The *custos rotulorum* shall appoint an able and sufficient person, residing in the county or division, to execute the office of clerk of the peace, by himself or his sufficient deputy (to be allowed of by the said *custos rotulorum*, 37 *H.* 8. *c.* 1.); and to take and receive the fees, profits, and perquisites thereof, for so long time only as such clerk of the peace shall well demean himself in his said office.

Who shall appoint.

By § 6. If he shall misdemean himself therein, and a complaint and charge in writing of such misdemeanor shall be exhibited against him, to the justices in sessions, the said justices may, on examination and due proof thereof, openly in the said sessions suspend or discharge him from the said office; and in such case, the *custos rotulorum* shall appoint another able and sufficient person, residing in the said county or division, to be clerk of the peace. And in case of refusal or neglect to make such appointment, before the next general quarter sessions, the justices in sessions may appoint one.

May be displaced for misbehaviour.

By § 8. The *custos rotulorum* shall not sell the place of clerk of the peace, or take any bond or other assurance to receive any reward, fee, or profit, directly or indirectly, to him or to any other person for such appointment; on pain that such *custos rotulorum* selling, and such clerk of the peace buying, shall be disabled to hold their respective places, and shall each forfeit double the value of the thing given to him who shall sue.

Office not to be sold.

By § 9. Every clerk of the peace, before entering upon the execution of his office, shall, in open sessions, take the oath following:—

Oath.

I A. B. *do swear, that I have not nor will pay any sum or sums of money, or other reward whatsoever, nor given any bond or other insurance to pay any money, fee, or profit, directly or indirectly, to any person or persons whomsoever, for such nomination and appointment; so help me God.*

He shall moreover take the oaths of allegiance, supremacy, and abjuration, and perform the same requisites, as other persons who qualify for offices.

Qualifying.

By stat. 22 & 23 *C.* 2. *c.* 22. § 7. He shall deliver to the sheriff, within twenty days after *September* 29th, yearly, a perfect estreat or schedule of all fines and other forfeitures in sessions.

Shall deliver estreats to the sheriff.

By § 8. Shall also yearly, on or before the second *Monday* after the morrow of All Souls, deliver into the court of exchequer (upon oath, stat. 4 & 5 *W.* 3. *c.* 24. § 5.) a perfect duplicate, certificate, and estreat thereof; on pain of 50*l.*, half to the king, and half to him that shall sue.

Shall deliver estreats into the exchequer.

By stat. 22 & 23 *C.* 2. *c.* 22. § 9. If he shall spare, take off, discharge, or conceal any such fine or forfeiture, unless it be by rule

Penalty of concealing fines.

of court, he shall forfeit treble value, half to the king, and half to him that shall sue; and shall also lose his office, and be for ever incapable to be employed in any office where the revenue is concerned. And moreover, by stat. 3 *G.* 1. *c.* 15. § 12. he may be amerced for not returning his estreats by the barons of the exchequer.

3 G. 1. c. 15.

10 & 11 W. 3. c. 23.

By stat. 10 & 11 *W. c.* 23. § 7. No clerk of assize, clerk of the peace, or other person, shall take any fee of any person bound over to give evidence against a traitor or felon for the discharge of his recognisance; nor shall take more than 2*s.* for drawing any bill of indictment against any such felon; on pain of 5*l.* to the party grieved, with full costs; and by § 8. if he draw a bill defective, he shall draw a new one *gratis*, on the like pain.

22 G. 2. c. 46. Not to act as solicitor.

By stat. 22 *G.* 2. *c.* 46. § 14. No clerk of the peace, or his deputy, shall act as solicitor, attorney, or agent, or sue out any process at any general or quarter sessions, where he shall execute the office of clerk of the peace or deputy; on pain of 50*l.* to him who shall sue in twelve months, with treble costs.

Fees.

The clerk of the peace is not bound to enter judgment, or the like, at the suit of any, without having the fee due for the same; but if the court order any thing without suit of another, to wit, *ex officio*, there he ought to enter the same, without having any fee for the entering thereof. *Cromp.* 159.

55 G. 3. c. 49.

By stat. 55 *G.* 3. *c.* 49. § 1. Annual returns of persons committed, tried, and convicted for criminal offences and misdemeanors, are required to be made to H. M.'s principal secretary of state for the home department by clerks of assize, clerks of the crown, clerks of the sessions of *oyer* and *terminer* and gaol delivery, clerks of the peace and town clerks, under penalty of 100*l.*

By § 3. The justices of assize, &c. are to settle the allowances to be made to the said clerks for their care, pains, &c. to be paid out of the county rates. A form of return is given in the act.

Fees payable by certain prisoners abolished by stat. 55 G. 3. c. 50.

His fees, in various cases, are limited by act of parliament; and by stat. 55 *G.* 3. *c.* 50. all such fees as have been usually paid or payable by any prisoner charged with, or indicted for any felony, or as an accessary thereto, or with or for any misdemeanor, against whom no bill of indictment shall be found, or who upon trial shall be acquitted, or who shall be discharged by proclamation for want of prosecution, are abolished, and in lieu and satisfaction thereof the treasurers, or other proper officers of the several counties, or of such divisions as are not usually assessed to the county at large, and of such cities, towns corporate, and places as do not pay to the rates of the several counties, in which they are respectively situated, are required, after receiving a certificate, signed by one or more justice of the peace, before whom such prisoner shall have been discharged, to pay to the clerk of the peace, or his deputy, such lawful sum as has been usually paid upon that occasion for any prisoner discharged as aforesaid.

And the clerk of the peace, or his deputy, claiming any fees or indemnification for the same under this act, must deliver at each and every session of the peace, or some adjournment thereof, an account verified upon oath in court, before the chairman, of all fees so due to him, or for which he still claims any indemnification.

And any clerk of the peace, or his deputy, exacting such fees in future, is rendered incapable of holding his office, and declared guilty of a misdemeanor.

By stat. 57 *G.* 3. *c.* 91. The justices of the peace for *Kent* and *Lancaster*, at their annual general sessions, and the justices of the peace in every other county, riding, division, city, town, liberty, or precinct, within *England* and *Wales*, at their respective general quarter sessions of the peace, are empowered to ascertain, make, and settle a table of fees and allowances to be taken by the clerk of the peace, which shall be subject to the approbation of the justices of the peace at the then next succeeding general annual session and general quarter session, or at some adjournment thereof; and such table of fees, when so approved, shall be laid before the judges of assize at the next assizes for such counties and places respectively, except the several places being counties in which assizes are not constantly or regularly holden in every year, and in those cases before the justices at the next assizes for the adjoining county where assizes are constantly and regularly holden, and to which prisoners are generally removed for trial from such places respectively, and also except the counties in *Wales* and the county palatine of *Chester*, and before the justices at the next great sessions for the several counties in *Wales*, and for the county palatine of *Chester*; and the said judges and justices respectively are hereby authorised to ratify and confirm such tables respectively, either as settled and approved as aforesaid, or with such alterations, additions, and improvements as to them shall appear to be just and reasonable; and the justices in sessions are also empowered from time to time to make other table of fees and allowances, to be approved and afterwards ratified and confirmed in like manner.

57 G.3. c.91. Justices of peace, at their annual general and general quarter sessions, to settle a table of fees to be taken by the clerks of the peace.

§ 2. And any clerk of the peace, or any person acting as such, demanding or receiving any other or greater fee or allowance than that which shall be so settled and confirmed, shall forfeit the sum of 5*l.* to any person who shall sue for the same in any of H. M.'s courts of record at *Westminster*. By § 3. every such table of fees and allowances shall be deposited with the clerk of the peace, and an exact written or printed copy shall be placed and constantly kept in a conspicuous part of every room or place wherein any general or quarter sessions of the peace for such county or place shall be held; and if any clerk of the peace or person acting as such, shall neglect to cause every such copy to be so placed and constantly kept, he shall forfeit to any person who shall sue for the same the sum of 5*l.*

Penalty on clerks of the peace taking greater fees than allowed.

Table of fees to be hung up in some conspicuous place where sessions are held.

By § 4. All actions shall be brought before the end of three calendar months after the offence committed.

Limitation of actions.

By stat. 5 *G.* 4. *c.* 61. § 5., the last *Insolvent* act, it is enacted, That in every county, or county of a city or town, the clerk of the peace, or if the court for the relief of insolvent debtors shall think fit, his sufficient deputy to be approved of by the said court, shall attend on all occasions, of the holding a circuit court by a commissioner under the insolvent acts, with proper officers to preserve order in the court-house, and may act as clerk to the said commissioner, to assist him in his performance of his several duties in such county, or county of a city or town; and the said clerk of the peace or his said deputy shall for his trouble be entitled to

5 G.4. c.61. Clerk of the peace or his deputy shall attend and act as clerk to commissioner of insolvents on his circuit.

Fee 5*s.* for each prisoner.

receive from every such prisoner in whose case he shall so act, the sum of 5*s.*, and no more, the same to be in lieu of all fees of every nature and kind for the performance of the duties under this act, and such fee shall be paid previous to the bringing up such prisoner before such commissioner.

An order of sessions removing a clerk of the peace for misbehaviour, need not set out the evidence on which it is founded. *R.* v. *Lloyd,* 2 *Str.* 996.

The other duties of his office will be found under the different titles to which they apply.

Appointment of a Clerk of the Peace; on stats. 37 *H.* 8. *c.* 1. and 1 *W. c.* 21.

TO all persons to whom these presents shall come, I the most noble George Granville Leveson Gower, *marquis of the county of* ———, *and* custos rotulorum *of the said county of* ———, *send greeting.*

WHEREAS the office of clerk of the peace for the county of ———, *is now void by the death of* ———, *late clerk of the peace for the said county, Now, know ye, that I the said marquis of the county of* ———, custos rotulorum *of the county aforesaid, do hereby nominate, elect, appoint, and assign* W. K., *an able and sufficient person, instructed and learned in the laws of* England, *and residing in the said county, to be clerk of the peace for the said county; to hold, execute, and enjoy the office of clerk of the peace for the county aforesaid, by himself or his sufficient deputy; and to take and receive the fees, profits, and perquisites thereof, so long as he shall well, justly, and honestly demean himself in his said office. In witness whereof I the said* ———, *have hereunto set my hand and seal, the* ——— *day of* ———, *in the* ——— *year* ———

Clipping Money. See **Coin**, *post.*

Cloaths and Garments. See **Assault**, *ante.*

Clockmakers. See **Servants**, Vol. V.

Cloth and Clothier. See **Woollen Manufacturer**, Vol. V.

Coaches and Carts. See **Taxes**, Vol. V.

Coaches, Stage. See **Stage Coaches**, Vol. V.

Coals and Coal-Mines.

§ I. *Measure and Price of Coals.*
[30 C. 2. st. 1. c. 8.—6 & 7 W. c. 10.—12 Ann. st. 2. c. 17.—11 G. 2. c. 15.—17 G. 2. c. 35.—15 G. 3. c. 27.—31 G. 3. c. 36.—43 G. 3. c. 134.—47 G. 3. sess. 2. c. lxviii.—52 G. 3. c. 9.]

II. *Destroying or damaging Coal-Mines.*
[10 G. 2. c. 32.—13 G. 2. c. 21.—9 G. 3. c. 29.—39 & 40 G. 3. c. 77.—56 G. 3. c. 125.]

I. Measure and Price of Coals.

Penalties on defacing marks on keels, boats, waggons, &c. carrying coals in ports.

BY stats. 30 *C.* 2. *st.* 1. *c.* 8. 6 & *W. c.* 10. and 11 *G.* 2. *c.* 15. for the admeasurement of keels, boats, waggons, wains, carts, and other carriages, used for the carrying of coals in the ports of *Newcastle*, *Sunderland*, and the other members of the port of *Newcastle*; and by stat. 15 *G.* 3. *c.* 27. for extending the like regulations to the other ports of this kingdom: if, after the admeasurement thereof by the commissioners appointed for that purpose, the marks shall be removed or altered, every person who had a hand in or was privy to the doing thereof shall, on conviction upon the oath of one witness before one justice, forfeit 10*l.* by distress, half to the king and half to the discoverer; and for want of distress shall be committed to the common gaol for three months.

31 G. 3. c. 36.

And by stat. 31 *G.* 3. *c.* 36. § 1. As to all such keels, boats, wains, carts, and other carriages used as aforesaid, which have been duly admeasured and marked as aforesaid, and such marks afterwards on repairing thereof or otherwise have been removed or altered, it is enacted that the same shall be re-admeasured and marked in manner aforesaid before they are again used, under penalty of forfeiture thereof, together with the coals laden thereon.

And by § 4. If any person shall wilfully or designedly remove, deface, or destroy any such mark, he shall on conviction before one justice, on the oath of one witness, forfeit and pay not exceeding 5*l.* nor less than 40*s.*; and in default thereof, shall be committed by such justice to the house of correction nearest to the place where the offence was committed for any time not exceeding one month, nor less than seven days.

Coal measure.

By stats. 12 *Ann. st.* 2. *c.* 17. § 11. and 15 *G.* 3. *c.* 27. § 1. Every coal bushel shall be round with a plain and even bottom, and be 19½ inches from outside to outside, and shall contain one *Winchester* bushel and one quart of water according to the standard for the *Winchester* bushel, described by stat. 13 & 14 *W.* 3. *c.* 5. § 28., and all sea-coal and culm chargeable with any duties by the *Winchester* measure shall be charged, sold, measured, and paid by the chalder containing 36 of such bushels heaped up, and no other: and so in proportion for any greater or less quantity, under the like penalties as are by law prescribed in regard to the *Winchester* bushel: and see stat. 47 *G.* 3. *sess.* 2. *c.* lxviii. § 109. *post*, p. 630., and stat. 5 *G.* 4. *c.* 74. § 7, 8. *tit.* Weights, &c. Vol. V.

17 G. 2. c. 35. Three justices may set the retail price of coals in certain places.

And by stat. 17 *G.* 2. *c.* 35. § 1. three justices (1 Q.) may set the prices of coals called sea-coals, brought by sea into any river, creek, or port, and sold by retail, after landing in any place to which stat. 16 & 17 *C.* 2. respecting the price of coals brought into the river *Thames* doth not extend, as they shall judge reasonable: allowing a competent profit to the retailer, beyond the price paid by him to the importer and the ordinary charges; and if an ingrosser or retailer of such coals shall refuse to sell as aforesaid, then the said justices shall appoint such persons, as they shall think fit, to enter into any place where such coals are stored up, and in case of refusal, taking a constable, to force entrance, and the said coals to sell at such rates, rendering the owner the money for which they were sold, necessary charges being deducted. And if any action be brought against the justice, constable, or other person, for any thing done in pursuance of this act, he may plead the general issue; and if the verdict be found for him, he shall recover damages and treble costs.

Persons interested not to act.

§ 2. But no person interested in any wharf used for the receiving and uttering coals, or that trades in the sale of coals, shall act in setting the price of coals.

52 G. 3. c. 9.

The last act passed relating to coals appears to be the 52 *G.* 3. *c.* 9. which after repealing stat. 25 *G.* 3. *c.* 54. so far as relates to *England* and *Wales*, and making other provisions in lieu thereof, enacts, § 6. that, all ships in the coal trade shall be measured, and the duties paid on the greatest quantity of coals, culm or cinders, which it shall appear that any such ship or vessel is capable of containing.

Law of coals in and near London.

Concerning the weights, measures, and prices of coals, especially in and about *London*, and also concerning the duties thereupon, there are regulations made by above forty different acts of parliament; which, not being of general concern, are here omitted.

47 G. 3. sess. 2. c. lxviii.

Stat. 47 *G.* 3. *sess.* 2. *c.* lxviii. was passed "for repealing the several acts regulating the vend and delivery of coals within the cities of *London* and *Westminster*, and liberties thereof, and in certain parts of the counties of *Middlesex*, *Surrey*, *Kent*, and *Essex*, within twenty-five miles of the *Exchange*." This act is therefore local; but as it relates to a considerable district of country, it is thought fit to give some of the most useful of its numerous provisions, where they relate to the duties of justices of peace.

Coal market.

By § 18. There shall be at all times hereafter at, or upon the *Coal Exchange*, a free open public market for the sale of coals brought into the port of *London*.

By § 19. such market shall be holden on every *Monday*, *Wednesday* and *Friday*, (*Good Friday*, *Christmas day*, and fast days by proclamation only excepted) from 12 at noon, till 2 in the afternoon, in each and every day. The mayor, &c. may continue the present clerks, &c. or displace them, and nominate others.

What shall be a ton.

By § 23. It is enacted, that 112lbs. avoirdupois weight shall be taken to be 1 cwt. and 20 cwt. shall be taken to be 1 ton.

Where the coals shall be sold.

By § 26. If coals be sold in any other place than the market where an account of them has been fixed up, (according to the regulations in § 24. and 25. of this act,) and on any other days and hours than those appointed for holding the same, the sale, and

contract for sale or purchase shall be void, and the persons offending shall forfeit 100*l.*

47 G. 3. sess. 2. c. lxviii.

What quantities may be purchased in the market.

By § 31. After the cargo shall have been duly entered with the clerk of the market, the coals shall be deemed to be on sale, and if the person having authority to sell them, give an undue preference to any one, or refuse to sell to any one any part not less than 21 chaldrons, he shall forfeit 100*l.*

Selling one sort for another.

By § 33. If any one sell one sort for another, (within the limits mentioned before,) he shall forfeit 20*l.* for every chaldron so sold, and be subject to any penalty imposed by 9 *Ann.*, or the 3 *G.* 2. But not in respect of any number of chaldrons above 25, for the same offence.

Unnecessary detention of coalheavers, &c.

By § 37. If any meter, meter's man, coal-heaver, or whipper, shall, by reason of the delivery of coals out of the vessel at a less rate than 42 chaldron *per* day, be detained on board the vessel beyond the time he would have been detained if the delivery had been at the rate of 42 chaldron *per* day, the master or owner of the vessel shall pay him a sum not exceeding 7*s.* for each day of detention, accordingly as any justice of the jurisdiction shall award on application by such meter, &c. above the costs of the application, if it were not through the fault of such meter, &c,; the application to be within three days after the unloading is complete; the money in case of non-payment to be levied by distress; and for want of distress, such justice may commit to the common gaol or house of correction of the place for which he acts, for not less than six months, unless the money and reasonable costs be sooner paid.

By § 38. If the detention be occasioned by the default of the coal buyer, the latter is to repay the money to the ship owner: and the justice may on application order such repayment, and on default made, it shall be levied by distress, and in default of distress he may commit for not more than six months, unless payment of the money and expenses be sooner made. The application to be made to the justice within ten days after award made of payment by the shipowner or master.

Pay of undertakers, &c.

By § 47. Every coal undertaker to have 1*d. per* chaldron for every chaldron delivered by the coal-heavers provided by him; and the coal-heavers and meter's men to receive 3*s.* each for every 20 chaldrons by them delivered.

Who may alter the rates of pay.

By § 48. The court of lord mayor and aldermen have power to increase or decrease the rates of payment, and any person paying or causing to be paid otherwise than as by that court ordered, will incur a forfeit of 10*l.*

How to be paid.

By § 49. The wages of coal-heavers or whippers, and meter's men, shall be *bonâ fide* paid by the masters or owners of ships, or their agents, to the undertaker, who shall divide the same amongst them: if there be no undertaker, then the masters or owners shall divide the wages *bonâ fide,* and if payment be made under any pretence whatever in any other thing than current money, the person so paying shall forfeit for each offence 10*l.*; the whole penalty to go to the informer.

Where to be paid.

By § 50. The undertaker is to pay the wages at his accounting-house, or other convenient place; and the shipmaster or owner, where there is no undertaker, is to pay on board the vessel where the employment has been. And if the payment be

47 G. 3. sess. 2. c. lxviii.

Not at alehouses, &c.

made at any alehouse, victualling-house, or inn, or in any other description of place than as aforesaid, the person making it shall for every offence forfeit 20*l*.

What proportion of wages to be advanced.

By § 51. The undertaker is during the delivery of the ship to advance, upon request of the coal-heavers or whippers, half the wages then earned by them, provided they attend to receive the same between five and seven o'clock in the evening.

Within what time payment o be made.

By § 52. If the delivery of the coals from the ship be completed before five o'clock in the evening, the coal-heavers or whippers are to be paid (applying in reasonable time) before seven o'clock of the same evening; and if the delivery be not completed at that hour, then the payment is to be before seven o'clock of the evening of the next day; but if the next day be a *Sunday*, *Good Friday*, *Christmas Day*, or a Fast-day by proclamation, then the payment is to be made before nine o'clock of the day on which the delivery is completed, whether it be finished before five o'clock of the evening of that day or not: the penalty, on not complying with these provisions, is for each offence a sum not exceeding 20*l*.

No reward to be taken or given for any preference given to any gang.

By § 54. If any person give to any master or owner of a ship any reward, or if the latter receive any reward from any one, for permission for procuring or for employing any particular coal-undertaker or gang of coal-heavers, he incurs a penalty of 20*l*.

Delivery to the lighter.

By § 55. Every meter superintending the measurement or delivery of any coals from any vessel into any lighter, barge, or other craft, is to give to the person having the management of the lighter, &c. before it shall quit such vessel, a certificate or certificates of the quantity of coals measured into such lighter, &c. every certificate to be numbered, beginning with No. 1. for the first, and ascending in arithmetical progression, having the common difference always one, until the whole cargo of the vessel be delivered; each certificate to be witnessed by the master or mate of such vessel, and the form of the certificate to be as follows:

I A. B. *do hereby certify, that I have delivered from on board the* [here insert the name of the ship or other vessel, and also the master's christian and surname] *master, from* [here insert the name of the port where the coals were put on board] *of* [here insert the name by which the coals are known] *coals* [here insert the number of chaldrons] *chaldrons in the room* [or *rooms* if more than one] *No.* [here specify the number of the room, reckoning from the head to the stern] *of the lighter* [or *barge* or other craft] *called the* [here insert the name of the lighter, barge, or other craft] *No.* [here insert the number of the lighter, barge, or other craft, and the name of the lighterman] *lighterman on account of* [here insert the name of the buyer of the coals, or the person for whose use such coals are delivered as shall be required.]

Witness C. D. *master* [or *mate*]. A. B. *meter*.

Port of London [here insert the day of the month, and the month and year in which such coals were delivered.]

And in case such coals shall be sold by weight, the word *tons* shall be inserted in such certificate in lieu of the word *chaldrons*,

and in the making out such certificate, no figure shall be made use of, but every word shall be legibly written at length, (save and except the date of the year, which may be written in figures,) and every person having the care of such lighter, &c. shall upon the delivery of such certificate pay to the person superintending the delivery of such coals, the sum of *3d.* for every such certificate; and if any person superintending the admeasurement of such coals, shall neglect to give such certificate, signed with his own name and in his own hand-writing, to the person having the care of such lighter, &c. or shall wilfully give the same with a false number of the certificate inserted therein, or with a false name of the vessel, or of the master, or of the port where the coals were put on board such vessel, or of the name or sort of coals, or with a false account of the quantity of coals admeasured into any room of such lighter, &c. inserted therein, or with a false name of the lighterman, or of the person for whose use such coals are delivered, or with a false month or date thereof, or of the year, or without the signature of such master or mate thereto, or make use of any device by which the same shall be false, or if any such master or mate shall neglect to sign any such certificate when true and accurate, or shall sign any such certificate knowing the whole or any part thereof to be false, or if any such person having the care of such lighter, &c. shall not wait a reasonable time after the coals shall have been so admeasured for the purpose of receiving such certificate, or shall neglect to receive the same, or shall, on the delivery of every such certificate, neglect to pay the person superintending the admeasurement of such coals the aforesaid sum of *3d.* for every such certificate, in every such case every such person offending as in this act mentioned, shall forfeit not exceeding *10l.*

47 G.3. sess.2. c.lxviii.

By § 56. Every person having the care of any lighter, &c. in the said port of *London*, shall deliver gratis, before any part be taken out, to the holder of the landing-place where such coals are intended to be delivered, or to his servant, the said certificate: and upon neglect to deliver the same, such person so offending shall for every such offence forfeit not exceeding *20l.*: or if any holder of a landing-place to whom such certificate shall have been delivered, neglect to permit any person concerned in the purchase or delivery of such coals, at all reasonable times to inspect such certificate, he shall for every such offence forfeit not exceeding *20l.*: or if any person shall wilfully erase, deface, or destroy such certificate, or suffer the same to be done, he shall forfeit not exceeding *20l.*

Lighterman shall deliver such certificate to the wharfinger.

By § 58. If any person shall in any manner prevent, or attempt to prevent any meter, who shall be engaged in the admeasurement or delivery, or in superintending the admeasurement or delivering of any coals from any vessel, from having the vat or other measure filled according to the directions of such meter so employed, he shall for every offence forfeit not exceeding *20l.*

Penalty for preventing the vat from being filled according to the directions of the meter.

By § 62. If any meter delivering coals shall load or suffer to be loaded from any such vessel in the river *Thames* into any lighter, &c. a less quantity than five chaldrons and one vat or twenty-one vats, or than some multiple of five chaldrons and one vat, or twenty-one vats, or in any room or division thereof, except for the clearance of such vessel when the cargo is reduced to a

Not less than five chaldrons and one vat, or some multiple of that quantity, shall be delivered into any

47 G. 3. sess. 2. c. lxviii.

barge or room of a barge.

less quantity than twenty-one vats; or if any person having the management of such lighter, &c. shall without the permission of such meter, take away his lighter, &c. so as to prevent the same from being loaded with the quantity as herein directed, every such person so offending shall for every such offence forfeit not exceeding 20*l*.

Penalty on ship meters for delivering certificates without measuring the coals.

By § 67. If any ship meter shall give a certificate for the delivering of any parcel of coals from any vessel, without having duly measured the same, or superintended the admeasurement of the whole of such coals by the vat, he shall for every such offence forfeit not exceeding 20*l*.

Penalty on giving gifts to ship meters.

Sums specified in the schedule not to be deemed gifts.

By § 68. If any ship owner, master, buyer of, or any vender of or dealer in coals, or any person on his behalf, shall give, or promise to give, any reward to any ship meter employed in the admeasurement of coals from any vessel laden with coals, on account of such meter having measured, or being about to measure, any coals from such vessel for such buyer, vender, or dealer; or if any such ship meter shall take any reward from any such owner, &c. every person so offending shall forfeit 100*l*.: Provided always, that nothing herein contained shall extend to giving or promising any of the several sums of money specified in the schedule in this act contained, for the several purposes therein mentioned.

Regulations for sale and removal of coals sold by pool measure.

By § 93. All coals sold by pool measure, and to be sent from any place within any of the limits of any of the offices, shall be loaded in sacks in the presence of one of the labouring land coal meters of the district; and it shall be lawful for such meter to measure the dimensions of all or any of such sacks before such sacks shall be filled; and such meter shall, when any room of coals in any lighter, &c. is sent from any such place as pool measure, by any land carriage, see that the coals so loaded are taken out of the particular room so sold, and that the whole of the coals are emptied out of such room and sent away to the purchaser; and in case he shall find any sack of less dimensions than required by this act, or that any sack doth not contain when loaded three bushels of coals, or that such coals sold as the coals of any room shall not be so, or that the whole of the coals contained in such room shall not be entirely emptied out of the same, in such case he may refuse to countersign the ticket by this act directed to be delivered by every vender to the purchaser; and if any person shall in any manner obstruct such meter, such person shall for such offence forfeit not exceeding 5*l*.

Pool measure coals when sent by a waggon.

By § 94. Every vender of coals sold as pool measure from any ship, &c. or from any place within the respective limits of the principal land coal-meters respectively, and to be delivered to the purchaser thereof in any carriage, shall cause to be delivered a ticket to the purchaser of such coals or his servant, before any part of the coals contained in such carriage shall be delivered therefrom; and every such ticket or paper shall be in the words and form following; (that is to say,)

47 G.3. sess.2. c. lxviii.

Form of the vender's ticket to be sent therewith.

Mr. A. B. [here insert the name of the purchaser.]

Take notice that you are to receive herewith

[Here insert the number] *sacks of* [here insert the name of the] *coals. For inspecting the loading and quality of which coals you are on the receipt of this ticket, in conformity to an act of parliament made in the forty-seventh year of the reign of king* George *the Third, to pay the undersigned* E. F. [here insert the name of the vender] *the sum of* [here insert the amount of the compensation directed by this act to be given to such principal meter or meters for the inspection of such coals, calculating the same as by this act directed] *being at and after the rate of* 1s. *for every five chaldron and one vat, sold to and to be received by you herewith, and by the same act this ticket is directed to be delivered to you before any of the coals are shot out of the cart or waggon, and that a bushel measure is in such cart or waggon, by which the carman is directed to measure,* gratis, *under the penalty of* 10l. *the coals contained in any one sack, which the purchaser or his servant or his servants may require, which sack is to contain three bushels heaped up in the form of a cone, the height of such cone to be at least six inches, and the outside of the measure to be the extremity of the base of such cone. And that in case of your being dissatisfied with the coals now sent, you are entitled by the same act to have the same remeasured by the bushel measure; provided you immediately and before any more of the coals than one sack shall be shot or delivered from the cart, waggon, or carriage in which the same are brought, send notice in writing of your desire to have the same remeasured to any of the land coal-meters' offices, and also to the vender of such coals,* E. F. [here insert the name of the vender] C. D. [here insert the name of the meter, and the office and place where the office is situated.] *Dated* [here insert the day of the month and year when such ticket was signed.]

On pain of forfeiting.

And in case any such vender of or dealer in coals shall not deliver or cause to be delivered such ticket as aforesaid, and so countersigned by a meter as aforesaid, to the purchaser of such coals or to his servant, before any part of such coals shall be shot or delivered from such cart, waggon, or other carriage laden with any such coals as aforesaid, then such vender shall for every such offence forfeit not exceeding 10*l.*; and in case the carman or person attending such carriage, to whom such ticket shall have been given, shall neglect to deliver it to the purchaser or to his servant before any part be shot or delivered from such carriage, he shall for every such offence forfeit not exceeding 10*l.*

Coals sold by pool measure need not be measured by bushel but at desire of the purchaser.

By § 99. Nothing herein contained shall be construed to extend to require any coals sold as and for pool measure to be measured by the bushel measure previous to such coals being loaded and sent away in any carriage from the vender's wharf, or other place of sale, except by the desire of the purchaser.

Coals sold by wharf measure shall be measured in the presence of a land coal meter.

By § 100. All coals sold for wharf measure in quantities exceeding eight bushels shall be measured in the presence of one of the labouring coal meters (belonging to the office within the limits of which the place of sale of such coals shall be situate) by the bushel measure heaped up.

47 G. 3. sess. 2. c. lxviii.
Coal-meter's payment for wharf measure coals.

By § 102. The sum of 6*d.* for every chaldron of coals, which shall be sold and delivered for wharf measure at any place within the limits of any of the offices of any of the respective land coal-meters, and so in proportion for any greater or less quantity than a chaldron, shall be paid by the occupier of the place from which such coals are taken, or by the seller to the principal land coal-meter for the time being of the office, &c., and thereupon such principal coal-meter shall deliver to every seller, or the carman who shall carry away the same, a ticket signed by one of the principal land coal-meters, and countersigned by the labouring coal-meter attending and delivering the same, in which shall be contained the christian and surname of the seller, and also either the christian or surname, or only the surname of the purchaser or consumer, and the quantity, and the day of the week, month, and year of the delivery and admeasurement, and amount of the metage charge, and the names of the persons employed to carry the same coals, and also a notice to the purchaser, that if he be dissatisfied with the measure, and shall desire to have all such coals remeasured, such dissatisfaction must be expressed to the carman before more than one sack of such coals is shot or unladen from the carriage conveying the same, and that if such purchaser shall desire to have all or any of the particular sacks remaining in such carriage remeasured, so as to ascertain the contents of each or any, that such desire must be expressed to the carman before any of the sacks of coals which such purchaser shall desire to have remeasured shall be unladen from the carriage in which the same shall be sent; which said ticket, being thus made complete, and metage paid, shall be delivered unaltered by the labouring coal-meter countersigning the same, without delay, to the person employed to carry the coals described in such ticket to the purchaser or consumer therein named, which said ticket, unaltered, the person therein named to be employed to carry the coals in such ticket described shall deliver to the respective consumer or purchaser therein named for his use; and thereupon he is required to pay to the seller named in such ticket the metage therein specified; and if such labouring coal-meter shall, after payment or tender of the metage charge in pursuance of this act, refuse to deliver such ticket to the person so employed, he shall for every such offence forfeit not exceeding 10*l.*; and if such person so employed shall, after the same ticket shall have been so delivered to him, either alter, or neglect, or refuse to deliver it to the purchaser or consumer therein named, he shall forfeit for every such offence not exceeding 40*s.*

Contents of the meter's ticket to be sent with such coals.

Penalty on meters receiving bribes or delivering false tickets.

By § 104. If any principal or labouring coal-meter shall wilfully permit false measure, or shall deliver a meter's ticket for any quantity of coals the whole of which he shall not have seen measured, or shall countersign any vender's ticket for any coals without having inspected them, he shall for every such offence forfeit not exceeding 10*l.*, and be rendered incapable of ever serving thereafter in the office of a coal-meter.

Penalty on vender for not delivering meter's ticket with wharf measure coals,

By § 105. If any quantity of coals exceeding eight bushels, sold for wharf measure, shall be sent in any carriage without having been measured by such bushel measure as hereinafter directed, or without such meter's ticket as aforesaid having been first obtained, or if such ticket shall not be delivered to the pur-

chaser before any part of such coals are shot or delivered upon his premises, the vender shall for every offence forfeit not exceeding 10*l.*

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Dimensions of sacks for coals.

By § 107. Except such sack shall be made of linen, and shall have been first sealed and marked with white paint in oil at *Guildhall, London,* or at the exchequer office, *Westminster,* by the proper officer there, and shall at the time of making use of such sack measure in the inside thereof at least four feet and two inches in length by two feet and one inch in breadth (and no sack shall be sealed or marked which shall not at the time of the marking or sealing thereof measure in the inside thereof four feet and four inches in length, and two feet and two inches in breadth); and if any vender of, or dealer in, or carrier of coals shall use any sack or sacks for delivering or carrying coals not sealed or marked as aforesaid, or of less length, at the time of using the same, than four feet and two inches at the least in the inside thereof, or of less breadth than two feet and one inch at the least in the inside thereof, every such vender, &c. shall, for every such sack so unmarked or deficient in length or breadth, forfeit not exceeding 40*s.* nor less than 20*s.*; and the justice, before whom such conviction shall take place, shall cause every such sack found unmarked or deficient to be destroyed.

Penalty on meter permitting sacks of less dimensions to be used.

By § 108. If any labouring coal-meter shall suffer any sack to be made use of, of less dimensions than directed by this act, he shall for every such offence forfeit not exceeding 5*l.*

What bushel measure to be made use of.

By § 109. No bushel shall be kept or used for the admeasurement of coals, which shall not be such as is prescribed in an act made in stat. 12 *Ann.* intituled "An act for the speedy and effectual preserving of the navigation of the river *Thames,* by stopping the breach in the levels of *Havering* and *Dagenham* in the county of *Essex,* and for ascertaining the coal measure," viz. stat. 2. c. 17. § 11. *ante,* p. 629.; and in making use of such bushel all coals shall be duly heaped up in such bushel in the form of a cone, such cone to be of the height of at least six inches, and the outside of the bushel to be the extremity of the basis of such cone, and that each and every chaldron of coals shall consist of thirty-six of such bushels so heaped, and so in proportion for any lesser quantity: and if any dealer in or vender of coals shall keep or make use of any other bushel, or shall in anywise decrease or diminish any such bushel, or shall permit any person so to do, he shall forfeit for every such offence not exceeding 20*l.*; and if any person acting under the authority of any dealer, &c. shall make use of any other bushel, or shall in any manner decrease or diminish such bushel, he for every such offence shall be committed to the house of correction by any one justice, there to be kept to hard labour for any time not exceeding three calendar months. And see stat. 5 *G.* 4. *c.* 74. § 7, 8. *tit.* Weights, &c. Vol. V.

Regulation of measures smaller than a bushel.

By § 110. All measures less than such bushel measure used by any person dealing in coals shall be fitted for work and use with iron or copper hoops, and shall, previously to their being used, be sealed or stamped at the exchequer-office, *Westminster,* or at the *Guildhall, London,* on the uppermost hoop, and shall be kept without any alteration; and if such person shall diminish any such less measure than the bushel, or shall make use of any means so as to prevent any such measure from holding as much as it would otherwise hold, in case such means had not been practised,

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or shall use any such measure when any such means have been practised, or shall use any such measure not so sealed or stamped, he shall for every such offence forfeit not exceeding 10*l*.

Dealers in coals sold as wharf measure if dissatisfied may have them remeasured.

By § 111. If any vender of or dealer in coals, sold as wharf measure, shall be dissatisfied with the measurement made at any place of sale under the inspection of the labouring land coal-meter stationed at such place, he, before such coals are sent away from such place of sale, shall send to the office of the principal land meter, within the limits of which such place may be situate, notice in writing, signifying his desire to have such coals remeasured; in such case such principal meter, or one of the labouring meters of such office (not being the meter under whose inspection the said coals were originally measured) shall within the space of two hours next after such notice in writing left, attend to remeasure the said coals, and shall remeasure the same, sack by sack, by the bushel measure, in the presence of such vender, &c. or his servant, and for such remeasurement such vender, &c. shall pay to such principal coal-meter 6*d*. for every chaldron so remeasured; and in case it shall appear that the coals so remeasured exceed the quantity for which the same were sold, if such excess shall be equal or amount to, or exceed two bushels in any chaldron so remeasured, the meter who first measured such coals shall, for every bushel so exceeding, forfeit 40*s*., together with the expenses of remeasurement.

Carman shall carry a bushel measure in his cart.

By § 112. If any driver of any carriage laden with coals for sale, or to be delivered to the purchaser by any vender of, or dealer in, or carrier of coals, shall not have placed on some conspicuous part of his carriage a perfect bushel measure as herein directed (which measure shall be provided by the vender, dealer, or carrier), every such driver shall for every such offence forfeit not exceeding 10*l*., and the vender, &c. not exceeding 20*l*.; provided that coals conveyed in bulk, or in any carriage belonging to the purchaser, may be so conveyed without the carman being so obliged.

Venders shall deliver tickets of coals sold by wharf measure.

By § 113. The vender of or dealer in coals, sold for wharf measure from any ship, &c., or place within, &c., and to be delivered to the purchaser from any carriage, shall deliver a printed ticket or paper, and such carmen, &c. shall deliver the same to the purchaser, or to his servant, before any part of the coals shall be shot or delivered, and every such ticket or paper shall be in the words and form following:

VENDER'S TICKET.

Mr. A. B. [here insert the name of the buyer.]

Take notice that you are to receive herewith

[Here insert the number] *sacks of* [here insert the name of the] *coals, and that by an act made in the forty-seventh year of the reign of king* George *the third, the carman is directed to deliver this ticket before he shoots any of the coals out of his cart or waggon, and that a bushel measure is in such cart or waggon, by which the carman is directed to measure* (gratis, *under the penalty of* 20*l*.) *the coals contained in any one sack which the purchaser or his servant may require, which sack is to contain three bushels heaped up in the form of*

a cone, the outside of the measure being the extremity of the base thereof, C. D. [here insert the name of the vender,] E. F. [here insert the name of the labouring meter, in case of the coals being sent from within either of the districts of the said respective offices.] *Dated* [here insert the day of the month, and the month and year when such ticket was signed.]

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And in case any such vender shall not deliver such ticket before any part of such coals shall be shot or delivered, he shall for every such offence forfeit not exceeding 20*l.*; and in case the carman, &c. shall (having so first received the same) neglect to deliver such ticket to the buyer, or his servant, before any part of such coals shall be shot or delivered, he shall for every such offence forfeit not exceeding 10*l.*

Penalty on vender not delivering ticket.

And on carman.

By § 114. The carman, &c. shall measure gratis, if he shall be required so to do, the coals contained in any one of the sacks contained in such carriage chosen by the purchaser or his servant, with such bushel measure as aforesaid, in order that such purchaser may be better enabled to judge of the necessity of having the whole of such coals remeasured in manner directed by this act.

Carmen shall measure one sack gratis in each cart.

By § 115. If any carman, &c. refuse to measure by the said bushel measure such sacks of coals in manner herein directed, when required thereunto by the purchaser or by his servant, or shall drive away without measuring in manner herein directed, or shall hinder the purchaser or his servant from measuring the said bushel measure, or all or any such sack or sacks in such his carriage, such carman, &c. shall for every such offence forfeit not exceeding 20*l.* nor less than 5*l.*, and the vender of or the dealer in such coals, shall forfeit not exceeding 20*l.* nor less than 5*l.*

Penalty on carman for refusing to measure, or driving a way without measuring.

By § 116. If any purchaser or his servant shall be dissatisfied with the measure of any coals delivered within the limits of any of the said respective offices of the said respective land coal-meters, and sent to him in any carriage, &c., and shall signify to the person attending such carriage his desire to have the coals or any part remeasured, the carman, &c. shall continue at the premises of the purchaser with such coals and the carriage until remeasured, and if he shall drive away before the coals shall be remeasured, without the consent of the purchaser or his servant, he shall for every such offence forfeit not exceeding 10*l.*

Coals sent by land carriage shall be remeasured if desired by the purchaser.

By § 117. Such purchaser or his servant desiring such remeasurement shall send to the vender or his wharf, warehouse, or place of abode, notice in writing that the said coals are to be remeasured, and also to any of the officers of the said respective land coal-meters, of his desire, and thereupon a principal meter, or one of the labouring meters, (not being the meter under whose inspection the said coals were originally measured) shall, within the space of two hours next after such notice in writing left, attend at the premises as shall be expressed in such notice for the purpose of remeasuring the coals, and shall remeasure the same in the presence of the vender and purchaser, or of his servant, if they shall attend; and in case they shall not attend, such meter shall proceed in the remeasuring in their absence, and such meter shall, at the option of the purchaser, remeasure, either by the distinct sacks, or else so as to ascertain the whole quantity in all the sacks taken together, and in case the purchaser shall not signify his option, such meter shall proceed to remeasure so as to ascer-

Purchaser shall send notice to meter's office if desirous of having coals remeasured.

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tain the whole quantity, and for such remeasurement such purchaser shall pay to the principal coal-meter 6*d*. for every chaldron of coals so remeasured; and in case it shall appear that any sack shall not contain three bushels, the vender shall, for every sack of coals so found deficient on remeasurement, forfeit not exceeding 40*s*.; and in case, upon the remeasurement to ascertain the whole quantity, it shall appear that the coals do not amount to the quantity for which they were sold, then if such coals shall have been sold for wharf measure, the vender shall forfeit for every bushel found deficient the sum of 5*l*., and every chaldron of coals so found deficient, for the use of the poor of the parish where such coals shall be remeasured; and the labouring meter under whose inspection the coals were first measured shall, for every bushel so deficient, forfeit 20*s*.; and the coal-porters who shall have first measured such coals for the vender shall, for every bushel of coals so wanting, forfeit 2*s*. 6*d*.; but if such coals shall have been sold for pool measure, the vender shall, in case such deficiency shall exceed four bushels, and not exceed ten bushels in any five chaldrons and one vat so measured, forfeit, for every bushel of coals so found deficient in every such five chaldrons and one vat, the sum of 40*s*.; and in case such deficiency shall exceed ten bushels in any five chaldrons and one vat so remeasured, then such vender shall forfeit for every such bushel so deficient the sum of 5*l*.: provided, that no such coals so sold and sent shall be remeasured, so as to ascertain the whole quantity of such coals taken together, after more than one sack of such coals shall have been shot from such carriage upon the premises of such purchaser.

Penalty on meters and coal porters in case of any coals sold for wharf measure proving deficient on such remeasurement.

Penalty on venders of coals by pool measure.

Penalty on meter in case of coals sold for pool measure proving deficient upon such remeasurement.

By § 118. If upon such remeasurement of any coals sold as pool measure, by any land carriage, made in such manner as to ascertain the whole quantity contained in all the sacks taken together, they shall be found to be less or more than at the rate of three bushels for each sack according to the number of sacks specified in the vender's ticket of such coals, then the meter who countersigned such vender's ticket of such coals shall, in case such deficiency or excess shall exceed four bushels in any five chaldrons and one vat of such coals so remeasured, forfeit and pay for every such bushel the sum of 20*s*.

Expenses of remeasurement.

By § 119. If upon any such remeasurement so as to ascertain the whole quantity taken together of coals sold for wharf or pool measure, the whole of such coals so remeasured shall be found less than the quantity for which the whole of such coals shall be sold, then the vender shall in case such deficiency shall amount to or exceed one bushel, repay to the purchaser the expenses of such remeasurement; but if such deficiency shall not amount to one bushel, then such expenses shall be borne by the purchaser; and if upon any such remeasurement which shall be made so as to ascertain the quantity contained in each of the sacks sent, sold for wharf or pool measure, it shall be found that one-fourth part or more of the number do not contain the quantity of three bushels each; then the vender shall repay to the purchaser or purchasers of such coals the expenses of the remeasurement; but if the number of such sacks so found deficient do not amount to one-fourth part of the whole number of the sacks, then such expenses shall be borne by the purchaser.

By § 121. As often as any carriage shall be stopped under pretence of remeasuring the coals, or any part, the owner of every such carriage shall be entitled to the sum of 3*s*. *per* hour for every hour the cart shall be so detained, and so in proportion for any fraction of an hour over and above the usual cartage of such coals; which shall be paid by the vender in case the same upon the remeasurement be found deficient in measure, or by the purchaser in case the same shall not be remeasured, or shall be found to amount to the quantity for which such coals were sold.

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By § 122. All coals which shall be sold by weight to be sent in any carriage to the purchaser, shall be sold or weighed by the cwt., each cwt. consisting of 112lb. avoirdupois weight, and 20 such cwt. shall be deemed to be one ton, and shall be weighed and loaded at such place of sale in the presence of one of the labouring land-meters from the office within the limits of which such place of sale shall be, in order that such meter may see that in every such loading the full weight of coals is actually given, which shall be expressed in the vender's ticket; and such meter may refuse to sign the vender's ticket in case such meter shall not see that the full weight shall be given according to the quantity which shall be expressed in such ticket; but he shall countersign the same in case the proper weight be given, and for such inspection shall be paid by the vender, or by the occupier of the place from whence such coals shall be sent to the principal land coal-meter within the limits of whose office such place may be, 6*d*. for every ton of coals so weighed, and so in proportion for any greater or less quantity than a ton, and such sum shall be repaid to such vender by the purchaser.

Regulation as to coals sold by weight.

By § 123. The vender or dealer in coals so sold by weight shall deliver to the purchaser or to his servant, immediately on the arrival of the carriage in which such coals shall be sent, and before any shall be unloaded, a paper or ticket in the form following: —

Vender's ticket with coals sold by weight.

Mr. A. B. [here insert the name of the buyer.]

TAKE notice that you are to receive herewith [here insert the number] *tons* [here insert the name of the] *coals, for inspecting which coals you are, in conformity to an act of parliament made in the 47th year of the reign of king* George *the Third, to repay me the undersigned* [here insert the name of the seller] *the sum of* [here insert the amount of the inspection charge] *being at and after the rate of* 6*d*. *for every ton of coals sold to and to be received by you herewith.*

Signed (C. D.) [Here insert the name of the seller.]
Countersigned (E. F.) [Here insert the name of the meter.]

And in case any such vender do not deliver such ticket so countersigned to the purchaser or to his servant before any part of such coals are unloaded, he shall for every such offence forfeit not exceeding 20*l*.; and in case the person attending such carriage laden with any such coals to whom any such ticket shall have been given in order to be delivered to the purchaser, (having first received the same from the vender or any person by the directions of the vender) neglect to deliver it to the purchaser, or

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to his servant, before any part be unloaded, such person shall for every such offence forfeit not exceeding 20*l*.

All coals shall be sold either by weight or by the chaldron or bushel.

By § 124. All coals sold within any of the limits of this act, except only such coals as shall be sold by weight, shall be sold either by the chaldron, such chaldron to consist of 36 of such bushels so heaped up as aforesaid, or by the sack, each sack containing three such bushels as aforesaid, or else by such bushel as aforesaid, or by the half bushel, peck, or half peck, provided such smaller measure shall be some aliquot part of such bushel measure.

Wall's End, Temple's Wall's End, Hebburn Main, Heaton Main, Biggs Main, South Hebburn, Willington, Killingsworth, and Percy Main coals, may be mixed together, and sold by the name of "Best coals mixed."

By § 127. It shall be lawful for any vender of or dealer in coals to mix or lay up in one heap or parcel in any convenient place, or to sell when mixed all or any two or more of the nine sorts or descriptions of coals called respectively *Wall's End* coals, *Temple's Wall's End* coals, *Hebburn Main* coals, *Heaton Main* coals, *Biggs Main* coals, *South Hebburn* coals, *Willington* coals, *Killingsworth* coals, and *Percy Main* coals, in any proportions whatsoever; but no such coals when so mixed together, or any part thereof, shall after the mixing thereof be sold to any purchaser, unless such coals be sold by wharf measure, nor unless such be sold and be described in the vender's ticket to be sent therewith by the name of "best coals mixed;" and if any such vender or dealer shall sell or send to any purchaser any such coals so mixed of all or any two or more of the said nine sorts of coals for any other measure than wharf measure, or without being sold and described in the vender's ticket by the name of "best coals mixed," he shall for every such offence forfeit not exceeding 20*l*.

Hartley, Blythe, and Coupen Main coals may be mixed together and sold by either of those names.

By § 128. It shall be lawful for any vender or dealer to mix in one heap in any convenient place, or to sell when mixed, all or any two of the three sorts of coals called respectively *Blythe* coals, *Hartley* coals, and *Coupen Main* coals; and it shall be lawful for such vender or dealer to sell such coals so mixed for either of such three respective sorts of which such coals shall be mixed.

Clearings of coal barges when reduced to 5 chaldrons wharf measure may be heaped up and mixed together in any warehouse, but the same shall be sold by wharf measure and described as "Coals of different sorts mixed."

By § 129. When the coals laden on board any lighter, barge, or other craft, shall be so reduced in quantity as that the whole shall not exceed five chaldrons wharf measure, it shall be lawful to mix in one heap in any convenient place all or any of such remaining clearings of coals out of each, but no such coals when so mixed shall be sold or sent to any purchaser unless such coals be sold by wharf measure and described in the vender's ticket to accompany the same by the name of "coals of different sorts mixed;" and if any such vender or dealer shall mix any two or more remaining clearings of coals out of any such lighters, &c. any of of which remaining clearings shall exceed five chaldrons wharf measure, or shall sell any such remaining coals so mixed and cleared out by any other measure than wharf measure, or without being described in the vender's ticket as "coals of different sorts mixed," he shall for every such offence forfeit not exceeding 50*l*.

Penalties on venders disobeying.

No other coals shall be mixed.

By § 130. No vender or dealer shall knowingly sell, when mixed, any coals whatsoever herein as above mentioned in § 127, 128, 129.; and in every case of so offending he shall forfeit not exceeding 20*l*.

Fines and penalties not exceeding 20*l*.

By § 146. All fines, penalties, or forfeitures by this act (the manner of levying and recovering whereof is not hereby otherwise directed) not exceeding 20*l*., shall be sued for within one ca-

lendar month after the offence committed, and shall be levied and recovered before any justice of the peace for the county, city, or place where the offence shall be committed, and such justice is upon information or complaint to him made to grant a summons or warrant to bring before him such offender at the time and place as shall be in such warrant specified; and if on the conviction of the offenders respectively either on his confession or on the evidence of any one or more witness or witnesses upon oath, such fine, &c. shall not be forthwith paid, the same shall be levied by distress and sale of the goods of the offender by warrant under the hand and seal of such justice, and the overplus of the money raised by such distress and sale, after deducting the fine, &c. and the costs of such distress and sale, shall be rendered to the owner of the goods so distrained; and for want of distress, or in case the fine, &c. shall not be forthwith paid, it shall be lawful for such justice to commit such offender to the common gaol or house of correction for the county, city, or place where the offence shall be committed, there to remain without bail or mainprize for not exceeding six calendar months, unless such fine, &c. and all reasonable charges attending the recovery thereof shall be sooner paid, and one moiety of all such fines, &c. when paid shall go to the informer and the other to the king, or shall be applied in such manner for carrying this act into execution as the justice before whom such conviction shall take place shall direct.

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may be recovered before a justice of the peace.

By § 147. An appeal is given against any conviction under this act to the next general quarter sessions, or general sessions, and removal by *certiorari* is denied.

Appeal to the quarter sessions

By § 150. All fines, &c. exceeding 20*l.* may be recovered in any of H. M.'s courts of record at *Westminster*, wherein no essoign nor any more than one imparlance shall be allowed by the person who shall inform and sue for the same within three calendar months after the offence shall be committed, one moiety for the use of the king, the other, with double costs of suit, for the use of the person who shall inform or sue for the same.

Recovery of penalties above 20*l.* in courts of record.

By § 152. Every justice before whom any person shall be convicted of any offence against this act shall cause the conviction to be drawn up according to the following form, *viz.*:—

Form of conviction.

BE it remembered, that on the ——— *day of* ———, *in the year of our Lord* ———, A. B. *is convicted before me* ———, *one of his majesty's justices of the peace for the* ——— [here specify the offence, and the time and place when and where committed, as the case may be] *contrary to an act of parliament made in the forty-seventh year of the reign of king* George *the third, intituled* [here insert the title of this act.] *Given under my hand and seal the day and year first above written.*

C. D.

The Schedule to which this Act refers.

Payments payable to the deputy sea-coal or ship meters by ship owners, coal buyers, or dealers.

By the Ship Owner or Owners.

The sum of 3*s.* *per* 20 chaldrons for working at the vat, and so in proportion for any greater or less quantity.

47 G. 3. sess. 2. c. lxviii.

The sum of 3*s.* *per* day for every day that the meters shall be on board of any ship or vessel for the purpose of measuring coals thereout in lieu of provisions and drink.

The sum of 10*s.* 6*d.* for travelling expenses when employed in the admeasurement of coals in any ship or vessel below *Greenwich*, in the county of *Kent*.

The sum of 1*l.* 1*s.* upon the delivery for each and every ship or other vessel in the room of all allowances in coals, and all other gratuities by or on behalf of the ship owners.

By the Buyer or Buyers of, or Dealer or Dealers in Coals.

For making out or delivering to him, her, or them, or his, her, or their servant or servants, agent or agents, a general bill or account of the coals admeasured or delivered out of any ship or other vessel on the account of any buyer or buyers, or dealer or dealers in coals, for each and every such bill or account the several sums following, that is to say, the sum of 3*d.* for any quantity of coals less than 50 chaldrons specified therein; the sum of 6*d.* for any quantity of coals specified therein, equal to 50 and less than 100 chaldrons; and the sum of 9*d.* for any quantity of coals specified therein equal to 100 chaldrons, and less than 200 chaldrons; and for 200 chaldrons and any greater quantity the sum of 1*s.*

II. Destroying or damaging Coal-Mines.

Setting fire to mines.

By stat. 10 *G.* 2. *c.* 32. § 6. If any person shall wilfully and maliciously set on fire any mine, pit, or delph of coal, or cannel coal, he shall be guilty of felony without benefit of clergy. See Vol. I. p. 363. 369.

13 G. 2. c. 21. Conveying water to mines.

By stat. 13 *G.* 2. *c.* 21. § 1. If any person shall divert or convey any water into any coal work, with design to destroy or damage the same, he shall pay to the party grieved treble damages with costs, recoverable in any court of record at *Westminster*.

9 G. 3. c. 29. Demolishing engines, waggon-ways, bridges, &c. belonging to mines.

And by stat. 9 *G.* 3. *c.* 29. § 3. If any person shall willfully and maliciously set fire to, burn, demolish, pull down, or otherwise destroy or damage any fire-engine, or other engine erected for draining water from collieries or coal-mines, or for drawing coals out of the same; or for draining water from any mine of lead, tin, copper, or other mineral; or any bridge, waggon way, or trunk erected for conveying coals from any colliery or coal-mine, or staith, for depositing the same; or any bridge, or waggon-way erected for conveying lead, tin, copper, or other mineral, from any such mine; or shall cause or procure the same to be done; he shall be guilty of felony and be transported for seven years.

Prosecution to be in 18 months.

§ 4. Provided, that no person shall be prosecuted on this act, unless the prosecution be commenced in eighteen months after the offence committed.

By stat. 39 & 40 *G.* 3. *c.* 77. § 1. If any person (after 1st *Sept.* 1800) shall wilfully and maliciously pull down, fill up, or attempt to pull down or fill up any air-way, water-way, drain, pit, level, or shaft, or damage or destroy any rail-way, tram road, or other road leading to or from any coal or other mine work; or if any person (having no claim in such mine) shall wilfully and unlawfully cut, dig, raise, take, or carry away any coal, culm, or other mineral, from any bed, band, vein, or mine, in any waste, open

Destroying or damaging mines or roads leading to or from the same.

or uninclosed lands; or shall enter into any level, pit, or shaft, with intent so to do, or shall be aiding or assisting therein; such person shall be deemed guilty of a misdemeanor, and on conviction, may be imprisoned for any time not exceeding six months.

39 & 40 G. 3. c. 77.

§ 2. Provided, that nothing herein shall extend to any trespass or damage done under ground by the owner of any adjoining coal or other mine, in working the same.

Not to extend to damage done under ground.

§ 3. And whereas it often happens that colliers and miners disregard their agreements, and wilfully and obstinately work coal and iron stone in a different manner to what they stipulated, or otherwise abandon the agreement they entered into, to the prejudice of their employers, it is enacted, that if any person shall enter into any contract or agreement in writing to get any coal, culm, iron stone, or iron ore, and shall wilfully and to the prejudice of the owner raise, get, or work the same in a different manner to his contract, and against the will of the owner or his agent; or shall refuse to fulfil his engagement; he shall, on conviction, either on confession or upon the oath of one witness, before one justice, forfeit not exceeding 40*s.* as to such justice shall seem meet, together with the costs, to be ascertained by such justice; and upon non-payment thereof such justice shall commit such offender to the common gaol without bail, for a time not exceeding six months, or until such penalty and costs shall be paid; and such contract shall thereupon become void.

Colliers and others working coal contrary to their agreements; or not fulfilling their contracts. Penalty.

§ 4. And whereas the owners and lessees of such mines, contracting for the getting of coal, or iron-stone, or ore by weight, are often under the necessity of advancing money to the colliers and miners upon the measure thereof in heaps before the same can be weighed, and frauds are practised in walling and stacking such coal and iron-stone or ore, by which they obtain money beyond what they earn, or are able to repay; and miners often defraud each other by conveying away iron-stoue from one heap to another, it is enacted, that if any person shall wall or stack any coal or iron-stone or ore in any false or fraudulent manner, with intent to deceive his employer, or to defraud the person who raised the same, he shall on conviction by confession or oath of one witness, before one justice, be committed to the common gaol or house of correction for any time not exceeding three months.

Fraudulently walling or stacking coal, iron-stone, &c.

§ 5. And if any person shall steal and take away any coal, culm, coak, wood, iron, ropes, or leather, not exceeding the value of 5*s.* from any place belonging to any coal dealer, or from any boat, barge, waggon, cart, or other carriage carrying the same; or shall steal, break, destroy, damage, or embezzle any tools or implements for getting coal or minerals, not exceeding the above value, and shall on the complaint of the owner or his agent be convicted, either by confession or the oath of one witness, before one justice, he shall for the first offence forfeit not exceeding 10*s.* over and above the costs, and upon nonpayment shall be committed to the house of correction to hard labour for one month, or until the penalty and charges be paid; and for the second offence, shall forfeit not exceeding 20*s.* over and above the costs, and upon nonpayment shall be committed to the house of correction to hard labour for three months, or until such penalty and

Stealing coals or implements not exceeding 5*s.* value.

Penalties.

39 & 40 G. 3. c. 77.

charges be paid; and for the third or any future offence shall forfeit not exceeding 40s. as to such justice shall seem meet, over and above the charges to be ascertained by such justice, and upon nonpayment shall be committed to the house of correction to hard labour for six months, or until such penalty and charges be paid.

Not to be punished twice for the same offence.

§ 5. Provided, that no person, who shall be convicted of any offence against this act, shall be prosecuted for the same offence under any other law.

Application of the forfeitures.

§ 6. All forfeitures paid in pursuance of this act shall be distributed half to the informer and half to the poor in such proportion as the justice shall think fit.

Inhabitants may be witnesses.

§ 7. The evidence of any inhabitant of the place where the offence shall be committed shall be good, notwithstanding any law or usage to the contrary.

Conviction.

§ 8. And the conviction may be drawn up in the following form, or to the same effect:

BE it remembered, that on the ——— *day of* ———, *in the year of our Lord* ———, A. O., *having been brought before me,* [or, *having been duly summoned and not having appeared*] *is on his own confession* [or, *on due proof*] *convicted before me* J. P., *one of his majesty's justices of the peace for the county of* ———, *for that he the said* A. O., *on the* ——— *day of* ———, *at* ——— *in the said county, did* [here state the offence according to the fact, and following the words of the act, and whether the first or other offence] *against the form of the satute in that case made; and I do adjudge him to forfeit and pay for the said offence the sum of* ———, *and also the further sum of* ——— *for the charges of this conviction. Given under my hand and seal the day and year first above written.*

Prosecutions to be within nine months.

§ 9. All prosecutions under this act shall be begun within nine calendar months after the offence is committed.

Appeal.

§ 10. Provided always, that if any person shall think himself aggrieved (except by any order of commitment,) he may within three calendar months appeal to the sessions, who may hear the same or adjourn the hearing thereof till the next sessions, and may quash any conviction or mitigate any fine, and award costs to either party, or order any money to he returned which hath been levied, and award such further satisfaction to be made to the party injured, as they shall judge reasonable.

Proceedings not to be quashed for want of form, nor removed by *certiorari.*

§ 10. Provided, that no proceeding shall be quashed for want of form, or be removed by *certiorari* or other process whatsoever.

56 G. 3. c. 125.
1 G. 1. c. 5.
9 G. 3. c. 29.

By stat. 56 *G.* 3. *c.* 125. for the further protection of collieries, mines, and other works, after reciting that whereas an act passed in the first year of the reign of H. M. king *George* the first, intituled *An act for preventing tumults and riotous assemblies, and for the more speedy and effectual punishing the rioters:* and whereas an act passed in the ninth year of the reign of his present majesty king *George* the third, intituled *An act for the more effectual punishment of such persons as shall demolish or pull down, burn or otherwise destroy or spoil, any mill or mills; and for preventing the destroying or damaging of engines for draining collieries and mines, or bridges, waggonways, or other things used in*

conveying coals, lead, tin, or other minerals from mines, or fences for inclosing lands, in pursuance of act of parliament: and whereas an act passed in the fifty-second year of the reign of his present majesty, intituled *An act for the more effectual punishment of persons destroying the properties of his majesty's subjects, and enabling the owners of such properties to recover damages for the injury sustained:* and whereas it is expedient and necessary that more effectual provisions should be made for the protection of property not within the provisions of the said acts; it is enacted, "that if after the passing of this act, any person or persons unlawfully, riotously, and tumultuously assembled together in disturbance of the public peace, shall unlawfully and with force demolish, pull down, destroy, or damage, or begin to demolish, pull down, destroy, or damage any fire-engine or other engine, erected or to be erected for making, sinking, or working collieries, coal-mines or other mines, or any bridge, waggonway, or trunk, erected or made, or to be erected or made for conveying coals or other minerals from any colliery, coal-mine or other mine, to any place, or for shipping the same, or any staith or other erection or building for depositing coals or other minerals, or used in the management or conducting of the business of any such colliery, coal-mine or other mire, whether the same engines, bridges, waggonways, trunks, staiths, erections, and other buildings or works shall be respectively completed and finished, or only begun to be set up, made, and erected, that then every such demolishing, pulling down, destroying, and damaging, or beginning to demolish, pull down, destroy, and damage, shall be adjudged felony, without benefit of clergy; and the offenders therein shall be adjudged felons, and shall suffer death as in case of felony without benefit of clergy."

56 G. 3. c. 125.

(52 G. 3. c. 130.)

Demolishing or destroying engines, erections, or other works, belonging to collieries, &c. adjudged felony without benefit of clergy.

§ 2. And "the person or persons injured or damnified by such demolishing, pulling down, destroying, or damaging, or beginning to demolish, pull down, destroy, or damage any such property herein-before specified, shall be entitled to and may and are hereby empowered to recover the value of such property herein-before specified, so demolished, pulled down, destroyed, or damaged as aforesaid, or the amount of the damage done to the same as aforeaid; and such value or damage shall and may be recovered, levied, raised, and reimbursed in such manner and form, and by such ways and means as are particularly provided, directed, or referred to in the said recited act of the first year of the reign of his late majesty king *George* the first, in respect of the several descriptions of buildings therein mentioned." (*a*)

Persons injured may recover the value of the property destroyed under 1 G. 1. c. 5.

§ 3. Provided always, "That whenever any person or number of persons shall so unlawfully assemble together in disturbance of the public peace as aforesaid, the person or persons who is or are the owner or proprietor, or owners or proprietors of any of the engines, works, buildings, or other property hereinbefore particularly specified, shall, as soon as conveniently may be, after such unlawful assembly shall take place, by himself or themselves, or by his or their servants, give or cause to be given due notice and information of such assembly having taken place, to some or one

Owners to give notice to magistrates of unlawful assemblies, and after sustaining damage, to give notice within two days to some inhabitants of the town, &c.

(*a*) See stat. 3 *G.* 4. c. 33. tit. Riot, &c. Vol. V. for the recovery of damages not exceeding 30*l.*

56 G. 3. c. 125.

of the nearest magistrates, and to the constable or some one of the resident housekeepers of the towns, villages, or hamlets near to the place where any such assembly shall take place; and that no person or persons shall be enabled to recover any damages by virtue of this act, unless he or they shall have given such notice and information as aforesaid, by himself or themselves, or by his or their servants, within two days after such damage or injury done him or them by any such offender or offenders as aforesaid, (a)shall give notice of such offence done and committed, unto some of the inhabitants of some town, village, or hamlet near unto the place where any such fact shall be committed; and shall within four days after such notice give in his or their examination upon oath, or the examination upon oath of his, her, or their servant or servants, that had the care of his, her, or their property hereinbefore specified, so destroyed or damaged as aforesaid, before any justice of the peaee of the county, liberty, or division where such fact shall be committed, inhabiting within the said hundred where the said fact shall happen to be committed, or near unto the same, whether he or they do know the person or persons that committed such fact, or any of them; and if upon such examination it be confessed that he or they do know the person or persons that committed the said fact, or any of them, that then he or they so confessing, shall be bound by recognisance to prosecute such offender or offenders, by indictment, or otherwise, according to the law of this realm: Provided also, that no person who shall sustain any damage by reason of any offence to be committed by any offender contrary to this act, shall be thereby enabled to sue or bring any action against any inhabitants of any hundred where such offence shall be committed, except the party or parties sustaining such damage shall commence his or their action, or suit within one year next after such offence shall be committed: Provided nevertheless, that the notice hereby required may and shall be given in *Scotland*, to the sheriff or stewart depute, or substitute of the county or stewartry where such fact shall happen to be committed, in order that such measures may be taken as the law of *Scotland* prescribes in such cases."

(a) *Sic.*

Examination upon oath to be had before a justice within four days as to a knowledge of the offenders.

Action for damages to be brought within a year.

In Scotland, notice to be given to the sheriff, &c.

For disputes between colliers, keelmen, pitmen, and miners, and their masters; See tit. Servants. Vol. V.

For removing difficulties in the conviction of offenders stealing property from mines; See stat. 56 *G.* 3. *c.* 73. *title* Larceny, (*Property*,) Vol. III. p. 254.

Cocoa Nuts. See Excise. Vol. II.

Coffee. See Excise. Vol. II.

Coin.

§ I. *Of the Coin in general — Weight, and of receiving or paying for the current Coin, more or less than its lawful Value.*
[14 G. 3. c. 92.—56 G. 3. c. 68.]

II. *Of counterfeiting, colouring, clipping, and impairing the Coin, bringing light Money into the Kingdom, and having Coining Tools in Possession.*
[25 Ed. 3. st. 5. c. 2.—1 Mar. st. 2. c. 6.—1 & 2 P. & M. c. 11.—5 Eliz. c. 11.—14 Eliz. c. 3.—18 Eliz. c. 1.—8 & 9 W. 3. c. 16.—c. 26.—1 Ann. st. 1. c. 9. c. 25.—7 Ann. c. 25.—15 G. 2. c. 28.—11 G. 3. c. 40.—14 G. 3. c. 42.—37 G. 3. c. 126.—39 G. 3. c. 75.—43 G. 3. c. 139.—56 G. 3. c. 68.]

III. *Of procuring, uttering, or tendering in Payment counterfeit Coin, and having such Coin in Possession. Evidence, &c. &c.*
[8 & 9 W. 3. c. 26.—9 & 10 W. 3. c. 21.—15 G. 2. c. 28.—9 G. 3. c. 37.—11 G. 3. c. 40.—13 G. 3. c. 71.—37 G. 3. c. 126.]

IV. *Of Bullion.*
[6 & 7 W. 3. c. 17.—8 & 9 W. 3. c. 26.—59 G. 3. c. 49.—1 & 2 G. 4. c. 26.]

V. *Of Tokens.*
[44 G. 3. c. 71.—51 G. 3. c. 110.—52 G. 3. c. 138.—c. 157.—53 G. 3. c. 19.—c. 114.—57 G. 3. c. 46.—c. 113.—c. 157.—58 G. 3. c. 14.]

For matters common to this with other Treasons, see title Treason. Vol. V.

I. Of the Coin in General, &c.

COIN, in *French*, signifieth a corner, and from thence hath its name, because in ancient times money was square, with corners, as it is in some countries to this day. 1 *Inst.* 207.

Original of the word.

The word doth properly signify a wedge, as the Latin *cuneus*; and hath a verb belonging to it in the several languages; and is translated to lawful money; either from the form of a wedge, ingot, or lingot (*linguetta*), in which bullion was transported from all antiquity; or else from the instrument, a wedge or chisel, with which, in trade, these lingots were occasionally cut to the weight required, as they are at this day in the *East Indies* with sheers.

14 G. 3. c. 92. Weights for coin.

By stat. 14 *G.* 3. *c.* 92. § 4, 5. No other weight than such as shall be stamped or marked by the officer appointed by H. M. for that purpose shall be sufficient in law for determining the weight of

14 G.3. c.92.

the gold and silver coin of this realm. And if any person shall counterfeit such stamp or mark, or knowingly sell any weight with the impression of such counterfeit stamp thereon; or shall wilfully increase and diminish any such weight after it has been so stamped or marked; or use any such weight in weighing the gold and silver coin of this realm, knowing the same to be so increased or diminished; he shall, on conviction before two justices, forfeit any sum not exceeding *50l.*, half to the king and half to him that shall inform or sue; and in default of payment he shall be committed to the common gaol or house of correction for any time not exceeding three months.

56 G.3. c.68.

The weight, alloy, impression, and denomination of money made in this kingdom are generally settled by indenture between the king and the master of the Mint; but the recent statute 56 *G.*3. *c.*68. § 4. has provided, with respect to the new silver coinage, that the bullion shall be coined into silver coins of a standard and fineness of eleven ounces two pennyweights of fine silver, and eighteen pennyweights of alloy in the pound troy, and in weight after the rate of sixty-six shillings to every pound troy, whether the same be coined in crowns, half-crowns, shillings or sixpences, or pieces of a lower denomination.

Denominating the value of coin.

The coining and legitimation of money, and the giving it its current value, are the unquestionable prerogatives of the crown; though great doubt has been entertained whether by force of the stats. 25 *Ed.* 3. *c.* 13., 9 *H.* 5. *st.* 2. *c.* 6., and other acts settling the standard of sterling, the king is not now restrained from altering it by increasing the alloy. But at this day it is the less necessary to consider the point, because the impolicy of the act is alone sufficient to prevent the attempt from being made; unless the marketable and relative value of gold and silver should sensibly alter. (*a*) 1 *Hale*, 188. 1 *Blac. Com.* 278. 1 *East's P. C.* 148.

In two recent cases, it was decided, that the exchanging guineas for bank notes, taking the guineas in such exchange at a higher value than they were current for by the king's proclamation, was not an offence within stat. 5 & 6 *Ed.* 6. *c.* 19. or at common law. *R.* v. *De Young*, 14 *East*, 402. *R.* v. *Wright*, *cited* 14 *East*, 404.

56 G.3. c.68. Current gold coin shall not be received or paid for more or less than its value, according to its denomination.

But by stat. 56 *G.*3. *c.* 68. § 13. It is enacted, that "no person shall by any means, device, shift, or contrivance whatsoever receive or pay for any gold coin lawfully current within the U. K. of *G. B.* and *Ireland*, any more or less in value, benefit, profit, or advantage, than the true lawful value which such gold coin doth or shall by its denomination import; nor shall utter or receive any piece or pieces of gold coin of this realm, at any greater or higher rate or value, nor at any less or lower rate or value than the same shall be current for in payment, according to the rates and values declared and set upon them pursuant to law; and that every person who shall offend herein shall be deemed and adjudged guilty of a misdemeanor, and being thereof convicted by due course of law, shall suffer imprisonment for the term of six calendar months, and shall find sureties for his or her good behaviour for one year more, to be computed from the end of the

(*a*) About the year 1796 and 1797, the marketable value of gold and silver fluctuated in a manner unprecedented, at least in modern times.

said six months: and if the same person shall afterwards be convicted of the like offence, such person shall, for such second offence, suffer one year's imprisonment, and find sureties for his or her good behaviour for one year more, to be computed from the end of the said last-mentioned year; and if the same person shall afterwards offend against this act, and shall by due course of law be convicted of any subsequent offence, he or she shall be imprisoned for the term of two years for every such subsequent offence."

56 G.3. c.68.

Second offence.

Subsequent offence.

By § 14. It is enacted, that if any person shall be convicted of receiving or paying any such gold coin, contrary to the act, and shall afterwards be guilty of the like offence, the clerk of the assize, or clerk of the peace for the county, city, or place where such conviction was so had, shall, at the request of the prosecutor, or any other person on H. M.'s behalf, certify such conviction; for which certificate two shillings and sixpence, and no more, shall be paid; and such certificate being produced in court, shall be sufficient proof of such former conviction.

And by § 15. No person against whom any bill of indictment shall be found, at any assizes or sessions of the peace, for any offence against the said acts, shall be entitled to traverse the same; but the court shall forthwith proceed to try, unless he shall shew good cause why his trial should be postponed.

And by § 16. It is enacted, "that on any prosecution or trial of any offender or offenders hereafter to be prosecuted or tried for any offence against this act, it shall not be necessary to prove that the gold coin received or paid or uttered contrary to this act, is the current gold coin of this realm, but the same shall be deemed and taken so to be, if received or paid or uttered as such, until the contrary thereof shall be proved to the satisfaction of the judge, justice, or court, before whom any such offender or offenders shall be prosecuted or tried."

Not necessary to prove the gold coin purchased to be current gold coin.

No person can be enforced to take in payment any money but of lawful metal, that is, of silver or gold, except for sums under sixpence. 2 *Inst*. 5. 7. 1 *Hale*, 195.

Silver and gold the only legal tender.

II. Of Counterfeiting.

The stat. 25 *Ed*. 3. *st*. 5. *c*. 2. declares it to be high treason, "if a man *counterfeit the king's money*."

25 Ed.3. st.5. c 2.

Only gold or silver coin, and not brass or copper, are within the denomination of the *king's money*, mentioned in the stat. 25 *Ed*. 3. *st*. 5. *c*. 2. 1 *Haw*. *c*. 17. § 57.

By stat. 14 *Eliz*. *c*. 3. If any person falsely forge or counterfeit any kind of coin of gold or silver of other realms as is not the proper coin of this realm, nor permitted to be current within this realm; such offence shall be adjudged misprision of high treason, and the offenders, their procurers, aiders, and abettors, shall be guilty of misprision of high treason.

14 El. c.3. Counterfeiting gold or silver foreign coin.

And by stat. 37 *G*. 3. *c*. 126. § 2. it is enacted, "that if any person or persons shall hereafter make, coin, or counterfeit any kind of coin, not the proper coin of this realm, *nor permitted to be current within the same*, but resembling, or made with intent to resemble or look like any gold or silver coin of any foreign state, &c., or to pass as such foreign coin; such person or persons

37 G.3. c.126.

37 G.3. c.126.

offending therein shall be deemed guilty of felony, and may be transported for any term of years not exceeding seven." By the words, "not permitted to be current within the realm," must be understood not permitted to be current by proclamation under the great seal.

1 Mar. st. 2. c.6.
Counterfeiting foreign current coin of gold or silver.

By 1 *Mar. st.* 2. *c.* 6. § 2. If any person shall falsely forge or counterfeit any such kind of coin of gold or silver as is not the proper coin of this realm, and shall be current therein by the king's consent, he, his counsellors, procurers, aiders, and abettors, shall be guilty of high treason.

43 G.3. c.139.
Counterfeiting foreign coin not current by proclamation, but resembling copper or mixed metal coin of foreign state — a misdemeanor.

By stat. 43 *G.* 3. *c.* 139. § 3. If any person shall, within any part of the U. K. of *G. B.* and *Ireland*, make, coin, or counterfeit, any kind of coin not the proper coin of this realm, nor ordered by H. M.'s proclamation to be deemed current money, but resembling or made with intent to resemble any copper coin or other coin made of any metal or mixed metals of less value than the silver coin of any foreign prince, state, or country, or to pass as such foreign coin, such person shall be guilty of a misdemeanor and breach of the peace; and on conviction shall for the first offence be imprisoned not exceeding a year, and for the second offence shall be transported for seven years.

§ 4. No traverse to be allowed to a subsequent assizes or sessions, without cause shewn to and allowed by the court.

By § 5. Certificates of former convictions shall be produced in cases where persons are tried for second offences.

§ 6. Inflicts a penalty of not exceeding 40*s.* nor less than 10*s.* for every such piece of counterfeit foreign coin in possession of any person who shall have more than five pieces thereof in his custody without lawful excuse.

By § 7. Houses of suspected persons may be searched by warrant of one justice, and counterfeit coin seized, &c.

§ 8. Proceedings not to be quashed for want of form.

37 G.3. c.126.
Having more than five pieces of false foreign coin in possession.

By stat. 37 *G.* 3. *c.* 126. § 6. If any person shall have in his custody, without lawful excuse, more than five pieces of any false or counterfeit coin of any kind, resembling or made with intent to resemble any gold or silver coin of any foreign country, or to pass as such foreign coin; he shall on conviction, upon the oath of one witness, before one justice, forfeit the same, which shall be cut in pieces and destroyed by order of such justice; and shall also forfeit not exceeding 5*l.* nor less than 40*s.* for every piece found in his custody, half to the informer, and half to the poor; and if not forthwith paid, such offender may be committed to the gaol or house of correction, to hard labour, for three calendar months, or until such penalty shall be paid.

Legitimating foreign coin.

And the king may by his proclamation legitimate foreign coin, and make it current money of this kingdom, according to the value imposed by such proclamation. 1 *Hale*, 192.

Therefore both *English* money coined by the king's authority, and foreign coin made current by proclamation, are within the denomination of lawful money of *England.* 1 *Inst.* 207.

But of this latter sort there is none at present in *England*; *Portugal* money being only taken by consent, as approaching nearest to our standard, and falling in tolerably well with our divisions of money into pounds and shillings, but no person is obliged to take it. 4 *Blac. Com.* 89.

By the statute of 25 *Ed.* 3. *st.* 5. *c.* 2. It is said to be treason to counterfeit the coin of this realm; that is to say, whether the person utter it or not. 3 *Inst.* 16. 1 *Haw. c.* 17. § 55.

25 Ed. 3. st. 5. c. 2. Counterfeiting the coin of this realm.

Ld. *Hale*, speaking of copper halfpence and farthings, makes it a *quære*, whether the counterfeiting of them be not treason within the statute of 25 *Ed.* 3., but inclines to the negative. 1 *Hale*, 195. 211, 212.

Counterfeiting halfpence and farthings.

And with this agrees the sense of the legislature, in stat. 15 *G.* 2. *c.* 28. § 6. which reciting, that whereas the counterfeiting of the copper coin of this kingdom is only a misdemeanor, and the punishment often very small, therefore enacteth, that if any person shall coin or counterfeit brass or copper halfpence or farthings, he, his counsellors, aiders, and abettors, shall suffer two years' imprisonment, and find sureties for their good behaviour for two years more.

15 G. 2. c. 28. Copper coin.

And further, by stat. 11 *G.* 3. *c.* 40. If any person shall make, coin, or counterfeit, any of the copper monies of this realm, commonly called an halfpenny or a farthing; or shall buy, sell, take, receive, pay, or put off any counterfeit copper money, not melted down or cut in pieces at or for a lower rate or value than by its denomination it doth import or was counterfeited for; he shall be guilty of felony [but within clergy]. And one justice, on complaint upon oath that there is just cause to suspect that any person hath been concerned in counterfeiting the copper monies of this realm, may by his warrant cause the dwelling-house, room, workshop, out-house, yard, garden, or other place belonging to such suspected person, to be searched for tools and implements for coining such copper monies; and if any such tools or implements shall at any time be found hid or concealed in any place so searched, or be found in the custody of any person whatsoever not then employed in the coining of money in H. M.'s mint, nor having the same by some lawful authority, it shall be lawful for any person whatsoever discovering the same to seize such tools or implements, and carry the same forthwith to a justice, who shall cause the same to be secured and produced in evidence against any person who shall be prosecuted for any the offences aforesaid, in some court proper for the determination thereof; and after they shall have been produced in evidence, as well the same so produced as the other so seized and not produced in evidence, shall forthwith, by order of the court, or by order of a justice, if there shall be no trial, be defaced and destroyed, or otherwise disposed of as such court or justice shall direct.

11 G. 3. c. 40.

Searching suspected places for it.

And by stat. 37 *G.* 3. *c.* 126. § 1. So much of the above acts of 15 *G.* 2. *c.* 28. and 11 *G.* 3. *c.* 40. and all other acts concerning the copper monies commonly called an *halfpenny* and a *farthing* or any other copper money of this realm, shall extend to all copper money which shall be coined and issued by order of H. M. and shall be ordered by his proclamation to be taken as current money; and all the provisions in such acts shall extend to all such other copper money as aforesaid.

37 G. 3. c. 126

The monies charged to be counterfeited must *resemble the true and lawful coin*, but this resemblance is a matter of fact of which the jury are to judge upon the evidence before them; the rule being, that the resemblance need not be perfect, but such as may

What is a sufficient counterfeiting.

in circulation ordinarily impose upon the world. Thus a counterfeiting with some little variation in the inscription, effigies or arms, done probably with intent to evade the law, is yet within it; and so is the counterfeiting in a different metal, if in appearance it be made to resemble the true coin. 1 *Haw. c.* 17. § 81. 1 *Russ.* 80. 1 *Hale*, 178. 184. 211. 215. 1 *East's P. C.* 163.

Round blanks without any impression are sufficient counterfeits if they resemble the coin in circulation.

In *Wilson's case, O. B. Oct. Sess.* 1783. 1 *Leach*, 285. the shillings produced in evidence against the prisoner were quite smooth, without the smallest vestige of either head or tail, and without any resemblance of the shillings in circulation, except their colour, size, and shape; and the master of the mint proved that they were bad, but that they were very like those shillings the impression on which had been worn away by time, and might very probably be taken by persons having less skill than himself for good shillings. And the *court* were of opinion that a blank that is smoothed, and made like a piece of legal coin, the impression of which is worn out, and yet suffered to remain in circulation, is sufficiently counterfeited to the similitude of the current coin of this realm to bring the counterfeiters and coiners of such blanks within the statute; these blanks having some reasonable likeness to that coin which has been defaced by time, and yet passes in circulation.

It is not necessary that there should be an impression on the counterfeit if it resemble the common worn coin.

And in the case of *Patrick & John Welsh, Hertford Lent Ass.* 1785, 1 *East's P. C.* 164. 1 *Leach*, 364. the point received the more solemn consideration of the twelve judges; the counsel for the prisoners having objected upon the fact of no impression of any sort or kind being discernible upon the shillings produced in evidence, that they were not counterfeited to the likeness and similitude of the good and legal coin of this realm. But the judges were of opinion, that it was a question of fact whether the counterfeit monies were of the likeness and similitude of the lawful current silver coin called a shilling. And the jury having so found it, the want of an impression was immaterial; because, from the impression being generally worn out or defaced, it was notorious that the currency of the genuine coin of that denomination was not thereby affected; the counterfeit, therefore, was perfect for circulation, and possibly might deceive the more readily from having no appearance of an impression: and in the deception the offence consists.

What a counterfeiting.

But when the impression of money was forged on an irregular piece of metal, not rounded, without finishing it, so as not to be in a state to pass current, the offence was holden to be incomplete, although the prisoner had actually attempted to pass it in that condition. *Varley's case*, 1771. 2 *Blac. R.* 632. 1 *MS. Sum.* 46.

And when two prisoners were convicted upon a count upon stat. 25 *Ed.* 3. *c.* 2. and it appeared upon the evidence, that no one piece of the base metal found upon the prisoners was in such a state as to make it passable, the conviction was held to be wrong. *R.* v. *Harris & Minion*, 1 *Leach*, 135.

37 G. 3. c. 126. Houses of suspected persons may be searched, and counterfeit coin seized, &c.

And by stat. 37 *G.* 3. *c.* 126. § 7. One justice may, upon complaint before him upon oath that there is just cause to suspect that any person is or hath been concerned in making or counterfeiting any such false or counterfeited foreign coin as aforesaid, by warrant under his hand, cause the dwelling-house, room, work-shop, outhouse, or other building, yard, garden, or other place belonging

to such suspected person, or where any such person shall be suspected to carry on any such making or counterfeiting, to be searched for any such coin, or for tools or implements for coining any such coin, or for materials for making the same; and if any such coin, or implements, or materials shall be there found; and if any such tools, implements, or materials shall be found in the possession of any person whomsoever, not having the same by some lawful authority, it shall be lawful for any person discovering the same to seize, and they shall seize such counterfeit coin, tools, implements and materials, and carry the same forthwith to a justice of the county or place where the same shall be seized, who shall have the same secured, and produced in evidence against any person who may be prosecuted for any such offence as aforesaid, in some court proper for the determination thereof; and after such coin, &c. hath been produced in evidence as aforesaid, as well those parts thereof so produced as every other part thereof so seized and not made use of in evidence, shall, by order of the court, where such offender shall be tried, or of some justice, if there be no trial, be defaced or destroyed, or otherwise disposed of as such court of justice shall direct.

37 G.3. c.126.

§ 8. And no proceedings before any justice shall be quashed for want of form.

§ 9. Any action or suit brought against any person for any thing done in pursuance of this act shall be commenced within three calendar months, and shall be brought where the cause of action shall arise, and the defendant may plead the general issue, and give this act and the special matter in evidence; and if it appear to have been done in pursuance thereof, or such action be brought after the time limited, or in any other county or place, the jury shall find for the defendant; and if a verdict pass for the defendant, or the plaintiff become nonsuit, or discontinue, or on demurrer judgment be given against the plaintiff, the defendant shall recover treble costs, and have the usual remedy for the same.

Bringing in false English money.

By 25 *Ed.* 3. *st.* 5. *c.* 2. If any person shall bring false money into the realm, counterfeit to the money of *England*, knowing the same to be false, to merchandise or make payment, in deceit of the king and his people; he shall be guilty of high treason.

Bringing in false gold and silver foreign coin, current in this realm.

Also by stat. 1 & 2 *P.* & *M.* *c.* 11. § 2. If any person shall bring from the parts beyond the sea any forged and counterfeit money like to the gold or silver coin of foreign realms, current in payment within the king's realm by the king's sufferance and consent, knowing the same to be false and counterfeit, to the intent to utter or make payment of the same within this realm by merchandising or otherwise: he, his counsellors, procurers, aiders, and abettors, shall be guilty of high treason.

Note. — This must be brought from a foreign nation, and not from *Ireland*, or other place subject to the crown of *England*; because the counterfeiting there is punishable by the laws of our king as much as in *England*. 1 *Haw.* *c.* 17. § 67.

Importing counterfeit gold or silver foreign coin, not current.

And moreover by stat. 37 *G.* 3. *c.* 126. § 3. it is enacted, "that if any person or persons shall bring into this realm any such false or counterfeit coin as aforesaid, (*i. e.* by § 2. "any kind of coin, not the proper coin of this realm, nor permitted to

37 G. 3. c. 126.

be current within the same,") resembling or made with intent to resemble or look like any gold or silver coin of any foreign prince, state, or country, or to pass as such foreign coin, knowing the same to be false or counterfeit, to the intent to utter the same within this realm, or within any dominions of the same; every such person shall be deemed guilty of felony, and may be transported for any term of years not exceeding seven." See 1 *East's P. C.* 176.

An importation *with intent to utter* is sufficient, without any actual uttering; which intent must be collected from circumstances. But though an actual uttering may be the best evidence of such intent, yet it seems safest that the indictment should follow the words of the statute. 1 *East's P. C.* 176.

14 G. 3. c. 42.

Considerable quantities of old silver coin of the realm, or coin purporting to be such, below the standard of the mint in weight, were formerly imported to the public detriment at that time; in consequence of which stat. 14 *G.* 3. *c.* 42. prohibited the bringing into the kingdom any such coin, and provided that if any silver coin, being or purporting to be the coin of this realm, exceeding in amount the sum of *5l.*, should be found by any officer of H. M.'s customs on board any ship, &c. or in the custody of any person coming directly from the water-side, or upon the information of one or more persons, in any house or other place, on search there made in the manner directed by stat. 14 *Car.* 2. *c.* 11. § 5. the officer might seize the same; and if upon examination it should appear to be of the standard weight, it should be restored: but if it should be less in weight than the standard of the mint, that is to say, at and after the rate of 62*s.* to every pound troy, it shall be forfeited. This act was revived and made perpetual by stat. 39 *G.* 3. *c.* 75. but by stat. 56 *G.* 3. *c.* 68. § 2. so much of stat. 14 *G.* 3. as enacts, that any silver coin of the realm, less in weight than after the rate of 62*s.* for every pound troy, shall be forfeited; and of any act or acts for reviving or continuing or making perpetual the provisions of the said last recited act in this respect, is repealed. See 1 *Russ.* 93.

39 G. 3. c. 75.
56 G. 3. c. 68.

5 Eliz. c. 11.
Clipping, washing, filing.

By stat. 5 *El. c.* 11. Clipping, washing, rounding, or filing, for lucre or gain, any the proper coin of this realm, or the dominions thereof, or of any other realm, current within this realm by proclamation, shall be adjudged treason in the offenders, their counsellors, consenters, and aiders.

18 Eliz. c. 1.
Impairing, diminishing, falsifying.

By stat. 18 *El. c.* 1. If any person shall, for lucre or gain, by any art, ways, or means, impair, diminish, falsify, scale, or lighten, the proper coin of this realm, or any the dominions thereof, or the coin of this realm allowed to be current (at the time of the offence committed) by the king's proclamation; he, his counsellors, consenters, and aiders shall be guilty of treason.

8 & 9 W. 3. c. 26.
Edging.

By stat. 8 & 9 *W.* 3. *c.* 26. § 3. made perpetual by stat. 7 *Ann. c.* 25. If any person (not employed in the mint) shall mark on the edges any the current coin of this kingdom; or, if any person whatsoever shall mark on the edges any of the diminished coin of this kingdom, or any counterfeit coin resembling the coin of this kingdom, with letters or grainings, or other marks or figures like unto those on the edges of money coined in the mint; he, his counsellors, procurers, aiders, and abettors, shall be guilty of

high treason. The prosecution to be commenced in six months after the offence, by stat. 7 *Ann. c.* 25. §2. See 1 *East's P.C.* 158.

7 Ann. c 25.

And by stat. 8 & 9 *W.* 3. *c.* 26. § 4. If any person shall colour, gild, or case over with gold or silver, or with any wash or materials producing the colour of gold or silver, any coin resembling any the current coin of this kingdom, or any round blanks of base metal, or of coarse gold or coarse silver, of a fit size and figure to be coined into counterfeit milled money, resembling any the gold or silver coin of this kingdom; or if any person shall gild over any silver blanks of a fit size and figure to be coined into pieces resembling the current gold coin of this kingdom; he, his counsellors, procurers, aiders, and abettors shall be guilty of high treason. The prosecution to be commenced within three months.

8 & 9 W.3 c.26. Colouring with gold or silver colour.

§ 9. As to what shall amount to a colouring within this act, the following case has been determined by the judges.

What a colouring within stat. 8 & 9 W.3. c.26.

R. v. *W. Case, Lancaster Sp. As.* 1795. *cor. Heath* J. 1 *East's P. C.* 165. *William Case* was found guilty, on an indictment for traitorously colouring with materials producing the colour of silver, a piece of base coin resembling a shilling. The round blanks were found, some steeped in aqua fortis, and some already taken out of it. They had the appearance of lead, and by rubbing they would resemble silver coin, but as they were, none would pass current. The judges, except two, thought the conviction right. They considered that the offence was complete when the piece was coloured; for it was then coloured with materials which produce the colour of silver; and that it was not necessary that the piece so coloured should be current, for the colouring of blanks was an offence within the clause.

A case under the like circumstances had been before expressly decided by the unanimous opinion of the judges to come within the statute. But there the doubt was, whether the legislature did not intend such a colouring only as is altogether produced by some outward application. But they all thought that this process of extracting the latent silver, by the power of the wash, from the body to the surface of the blank, was a colouring within the words of the act. They thought, besides, that it might be charged as a colouring with silver; for the effect of the aqua fortis is to corrode the base metal, and leave the silver only on the superficies, and so the copper is coloured or cased with silver. *R.* v. *Lavey and Parker, O. B. Dec.* 1776. 1 *East's P. C.* 166. 1 *Leach*, 153.

And by stat. 15 *G.* 2. *c.* 28. If any person shall wash, gild, or colour, any lawful or counterfeit silver coin called a shilling or sixpence, or add to, or alter the impression, or any part thereof, on either side, with intent to make such shilling or sixpence resemble a guinea or half guinea; or shall any way alter or colour halfpennies, or farthings, with intent to make them resemble a shilling or sixpence; he, his counsellors, aiders, and abettors, shall be guilty of high treason.

15 G.2. c.28. Colouring shillings or sixpences to look like guineas or half guineas, or halfpence or farthings to look like shillings or sixpences.

§ 5. Prosecution to be in six months.

Stat. 56 *G.* 3. c. 68. § 17. relating to the new silver coinage, enacts, that all and every act and acts in force immediately before the passing of that act, respecting the coin of this realm, or the *clipping, diminishing,* or *counterfeiting of the same,* or *respecting any other matters relating thereto,* and all provisions, proceedings, penalties, forfeitures and punishments therein contained

56 G 3. c.68. Clipping, diminishing, or counterfeiting new silver coin.

56 G.3. c.68.

or directed, not expressly repealed by that act, and not repugnant or contradictory to the enactments and provisions of that act, shall be and continue in full force and effect, and shall be applied and put in execution with respect to the silver coin to be coined in pursuance of the directions of that act, as fully and effectually to all intents and purposes whatsoever, as if the same were repeated and re-enacted in that act.

8 & 9 W.3. c.26.

Stat. 8 & 9 *W.3. c.* 26. § 1. (made perpetual by stat. 7 *Ann. c.* 25.) enacts, that no smith, &c. or other person whatsoever (other than the persons employed in H. M.'s mints in the Tower of *London* or elsewhere, and for the use and service of the said mints only, or persons lawfully authorised by the lords commissioners of the treasury, or lord high treasurer of *England* for the time being,) shall knowingly *make* or *mend*, or begin or proceed to make or mend, or assist in the making or mending of any *puncheon, counter-puncheon, matrix, stamp, dye, pattern,* or *mould*, of steel, iron, silver, or other metal or metals, or of spaud, or fine founder's earth or sand, or of any other materials whatsoever, in or upon which there shall be or be made or impressed, or which will make or impress, the figure, stamp, resemblance or similitude of both or either of the sides or flats of any gold or silver coin, current within this kingdom; *nor* shall knowingly *make* or *mend*, or begin or proceed to make or mend, or assist in the making or mending of *any edger*, or *edging tool, instrument*, or *engine*, not of common use in any trade, but contrived for making (*a*) of money round the edges with letters, grainings, or other marks or figures resembling those on the edges of money coined in H. M.'s mint; nor *any press for coinage, nor any cutting-engine*, for cutting round blanks, by force of a screw, out of flatted bars of gold, silver, or other metal; nor shall knowingly *buy* or *sell, hide*, or *conceal*, or without lawful authority or sufficient excuse for that purpose, knowingly *have in his or their houses, custody, or possession, any such puncheon, counter-puncheon, matrix, stamp, dye, edger, cutting-engine*, or *other tool or instrument before mentioned*. And every such offender and offenders, their counsellors, procurers, aiders, and abettors shall be guilty of high treason, and being thereof convicted or attainted, shall suffer death, &c.

1 Ann. st. 1. c. 9.
7 Ann. c. 25.

§ 9. Prosecution to be in three months. But by stats. 1 *Ann. st.* 1. *c.* 9. § 2. and 7 *Ann. c.* 25. § 2. the prosecution for offences by making or mending, or beginning or proceeding to make or mend any coining tool or instrument in the above said act prohibited, or by marking of money round the edges with letters or grainings, may be commenced at any time within six months.

8 & 9 W.3. c. 26.
Conveying out of the mint, or concealing such instruments.

By stat. 8 & 9 *W.3. c.* 26. § 2. "If any person shall, without lawful authority for that purpose, wittingly or knowingly convey or assist in conveying *out of any of H. M.'s mints any puncheon, counter-puncheon, matrix, dye, stamp, edger, cutting-engine, press, or other tool, engine, or instrument used for or about the coining of monies* there, or any useful part of such tools or instruments; such offenders, their counsellors, procurers, aiders, or abettors, as also all and every person and persons knowingly receiving, hiding, or concealing the same, shall be adjudged guilty of high treason, and being convicted or attainted thereof shall suffer death.—

(*a*) *Quære*, a misprint in the printed statute for *marking*. 1 *East's P. C.* 167.

§ 9. The prosecution to be within three months. See 1 *East's P. C.* 168.

As to what tools or instruments which are to be considered within the statute:

Construction of 8 & 9 W. 3. c. 26.

Bell's case, Serjeant's Inn, 30th June, 1755. *Fost.* 430. *John Bell* was indicted at the *O. B.* 1753, for having *in his custody a press for coinage* without any lawful authority, &c. One of the points reserved was, whether a press for coinage be one of the tools or instruments within that clause of the act on which the indictment was founded. A majority of the judges answered the question in the affirmative.

A mould for coining is a tool or instrument within the statute 8 & 9 W. 3. c. 26. § 1. the unlawful custody of which is treason.

Hugh Lennard was indicted at *Taunton Lent Assizes,* 1772, for having in his custody and possession, without any lawful excuse, one mould made of lead, on which was made and impressed the figure, stamp, resemblance, and similitude of one of the sides or flats of a shilling, viz. the head side, &c. The prisoner being convicted, it was submitted to the judges, 1st. Whether the mould found in the prisoner's custody be comprised under the general words, "*other tool or instrument before mentioned,*" so as to make the unlawful custody of it high treason? 2dly, If it be so comprised, whether it should not have been laid in the indictment to be *a tool or instrument,* in the words of the act? The judges were unanimously of opinion that the mould was a tool or instrument, mentioned in the former part of the statute, and therefore included under the general words in the latter part; and that having been before expressly mentioned by name, it need not be averred in the indictment to be such tool or instrument.

It also appeared in this case, that the mould had only the resemblance of a shilling *inverted;* viz. the convex parts of the shilling being concave in the mould; and the head and letters reversed. And the court held this to be well enough laid in the indictment, as "*made and impressed* the figure, stamp, &c. of the head side," &c.; but that it would have been better described as "a mould that *would make and impress* the similitude," &c. See 1 *East's P. C.* 170.

Bell's case.

In *John Bell's* case, (*Fost.* 430. *supra*) it was decided, that a press for coinage, proper to be used for the coining of guineas, shillings, and louis d'ors, is within stat. 8 & 9 *W.* 3. *c.* 26. But that if it be in the person's possession for the purpose of coining foreign coin only, that circumstance alone takes it out of the act. However, Ld. C. J. *Ryder*, and Ld. *Hardwicke*, and *Foster* J. doubted of this. See *Dodson's Life of Sir M. Foster*, p. 44.

Ridgley's case.

R. v. *Ridgley, O. B. Dec.* 1778. 1 *East's P. C.* 171. 1 *Leach*, 189. *Ridgley* was indicted for feloniously and traitorously having in his possession one puncheon, upon which was impressed and made the figure, resemblance, and similitude of the head side of a shilling without lawful authority, &c. He was charged in another count with having such a puncheon, which would make and impress the figure, &c. The puncheon was found in the prisoner's lodging, with a quantity of bad money. It appeared that the puncheon was complete and ready for use, and that the manner of making it is this: a shilling is cut away to the outline of the head; that outline is fixed upon a piece of steel, which is filed or cut close to the outline, which makes the puncheon; the puncheon makes the die, which is the counter-puncheon: that a puncheon

Ridgley's case.

is complete without letters, but it may be made with letters upon it, though from the difficulty and inconvenience it is never so made at the mint; but after the die is struck the letters are engraved upon it: that a puncheon alone without the counter-puncheon will not make the figure: that to make an old shilling current, nothing else was necessary but such a puncheon: that the puncheon was hardened and ready for use; but it was impossible to say that the shillings found on the prisoner were made with it, the impression was so faint, though they had all the appearance of it. The judges were all of opinion that the prisoner's case came within the words of the stat. 8 & 9 *W.* 3. *Serjeant's Inn*, 23 *Jan.* 1779.

The having tools for coining in possession, with intent to use them, has been held to be a misdemeanor *at common law.* *R.* v. *Sutton*, *Cas. temp. Hardw.* 370. 1 *East's P. C.* 172.

8 & 9 W. 3. c. 16. Seizing tools, &c. to produce in evidence.

By stat. 8 & 9 *W.* 3. *c.* 16. § 5. If any puncheon, dye, stamp, edger, cutting-engine, press, flask, or other tool, instrument, or engine, used or designed for coining or counterfeiting gold or silver monies, or any part of such tool or engine, shall be hid or concealed in any place, or found in the house, custody, or possession of any person not employed in the coining of money in the mint, nor having the same by some lawful authority: any person whatsoever discovering the same shall seize the same, and carry them forthwith to some justice of the peace to be by him secured, to be produced in evidence against any person who shall be prosecuted for any such offence. And after they have been produced in evidence, as well the same so produced, as the other so seized and not produced, shall forthwith, by order of the court (or by order and in the presence of a justice, if there be no such trial), be totally defaced and destroyed.

For the better preventing the clipping, diminishing, or impairing of the current coin;

6 & 7 W. 3. c. 17.

By stat. 6 & 7 *W.* 3. *c.* 17. § 4. "for the better preventing the clipping, diminishing, or impairing the current coin of this kingdom, if any person shall buy or sell, and knowingly have in his custody or possession, any clippings or filings of the current coin of this kingdom, he shall forfeit the same, and also 500*l.*, half to the king and half to the informer; and shall also be branded in the right cheek with a hot iron with the letter *R.* and be imprisoned till payment of the 500*l.* By § 8. of the same act, the very possession of bullion, under certain circumstances of suspicion, throws the *onus* upon the party indicted of proving that it was neither coin nor clippings melted, under pain of imprisonment for six months.

III. Of receiving, uttering, or tendering counterfeit Coin.

These may amount to different degrees of offence according to the circumstances. If *A.* counterfeit the gold or silver coin current, and by agreement before such counterfeiting *B.* is to receive and vend the money, he is an aider and abettor to the act itself of counterfeiting; and consequently a principal traitor within the law. In the case of the copper coin, he would be an accessary before the fact to the felony within the stat. 11 *G.* 3. *c.* 40. And if *B.* had done this afterwards for *A.*'s benefit, without

any such agreement precedent to the counterfeiting, but yet knowing the fact; this seems to be the same as a receiving of the principal, because he maintains him. But if he had merely vented the money for his own benefit, knowing it to be false, in fraud of any person, he was only liable to be punished as for a cheat and misdemeanor before stat. 15 *G.* 2. *c.* 28 hereafter mentioned.

If one person counterfeits, and another person knows that he did so, and doth neither receive, maintain, or abet him, but conceals his knowledge; this is misprision of treason.

8 & 9 W. 3. c. 26. Receiving, paying, or putting off, &c. felony.

By stat. 8 & 9 *W.* 3. *c.* 26. (made perpetual by 7 *Ann. c.* 25. § 1. (*a*) § 6.) "Whoever shall take, receive, pay, or put off any counterfeit milled money, or any milled money whatsoever unlawfully diminished and not cut in pieces, at or for a lower rate or value than the same by its denomination doth or shall import or was coined or counterfeited for, shall be guilty of felony." By § 7. the corruption of blood is saved; and by § 9. the prosecution must be commenced within three months after the offence committed. (*a*)

What a putting off.

The putting off under these statutes means an actual passing or getting rid of the money, and not merely an attempt to do so; as by tendering it to another who returns it again, refusing to accept it; which is a distinct offence provided for by stat. 15 *G.* 2. *c.* 28. after-mentioned. See 1 *East's P. C.* 179. In the case of *Wooldridge*, who was indicted on stat. 8 & 9 *W.* 3. *c.* 26. § 6. for putting off counterfeit money to a Mrs. *Levey*, it appeared that he had carried a large quantity of such money to her house, which he had agreed to put off to her, and she to receive from him, at the rate of 29*s.* for every guinea; and having laid the shillings down on a table, and being in the act of counting them, the officers of justice entered the room and apprehended them before she could pay the prisoner for those she had selected. This was ruled not to be a complete putting off. 1 *Leach*, 251. *O. B. Feb.* 1784. 1 *East's P. C.* 179.

Wooldridge's case.

In an indictment for putting off "*milled money*," it is unnecessary that the counterfeit money should appear to have been *milled*: for considering *milled money* as one word, (as if written with a hyphen,) and descriptive of the money now current, if the counterfeit resemble the money which, if genuine, would have been milled, it is enough. *Bunning's case, O. B. Sept.* 1794. 1 *East's P. C.* 180. 8 & 9 *W.* 3. *c.* 26. § 3.

Mr. *East* says, he has been informed that there has been no *hammered* money since the time of *Car.* 2. 1 *East's P. C.* 180. (*notis.*)

It must be vented at a lower rate.

The mere venting of money does not come within this act, unless it be done at a lower value than the coin imports; and it should be so stated in the indictment. 1 *East's P. C.* 180.

If the indictment be for putting off *diminished* money at a lower rate, it must be averred that it was *unlawfully* diminished. And it has been held that an indictment upon this statute was bad, for omitting to state that the counterfeit money was "not cut in

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(*a*) The proceedings before a magistrate will be considered as the commencement of the prosecution. Per *Le Blanc*, J. *Rex* v. *Barker*, *Stafford Sum. Ass.* 1812. who was indicted under this statute, for putting off counterfeit milled money. The prisoner had been in gaol more than three months before the assizes. *M.S.*

pieces," as those words are a material part of the description of the offence. *Palmer's case*, 1 *Leach*, 102. 1 *Russ.*, 111, 112. See 1 *East's P. C.* 180. 5 *T. R.* 217. (n.)

8 & 9 W. 3. c. 26.

This statute mentioning "counterfeit *money*," generally, must, it seems be confined to gold or silver coin, in the manner before described. But by stat. 11 *G.* 3. *c.* 40. § 2. "If any person shall buy, sell, take, receive, pay, or put off any counterfeit copper coin, not melted down or cut in pieces, at or for a lower rate or value than the same by its denomination imports, or was counterfeited for, he shall be adjudged guilty of felony." 1 *East's P. C.* 179.

11 G. 3. c. 40. Copper coin.

Punishment.

The punishment under the above-mentioned statutes of *W.* 3. and *G.* 3. was burning in the hand, and imprisonment not exceeding a year; and also under stat. 18 *Eliz.* *c.* 7. § 3.; but the punishment of burning in the hand is abolished by stat. 19 *G.* 3. *c.* 74. § 3. (*a*) and in lieu thereof, the offender is subjected to a moderate fine or whipping, at the discretion of the court. *R.* v. *West and others*, *O. B.* *Sept.* 1780. 1 *MS. Sum.* 91.

15 G. 2. c. 28.

By stat. 15 *G.* 2. *c.* 28. § 2. After reciting, that whereas the uttering of false money is a crime frequently committed all over the kingdom, and the offenders are not deterred, because it is only a misdemeanor, and the punishment generally small, though there is reason to believe that the utterers are often the coiners or in confederacy with them; it is enacted, that "if any person or persons shall utter, or tender in payment any false or counterfeit money, knowing the same to be false or counterfeit, to any person or persons," and shall be thereof convicted, he shall suffer six months' imprisonment, and find sureties for good behaviour for six months further; and on conviction for a second offence shall suffer two years' imprisonment, and find sureties for two years more; and on conviction for a third offence shall be adjudged guilty of felony without benefit of clergy."

Uttering or tendering in payment.

Further punishment if the utterer have other base money in possession at the time of uttering, or shall within 10 days after utter more.

By § 3. "If any person shall utter or tender in payment any false or counterfeit money, knowing the same to be so, to any person or persons; and shall either the same day or within ten days then next utter or tender in payment any more or other false or counterfeit money, knowing the same to be so, to the same or any other person or persons; or shall at the time of such uttering or tendering have about him in his custody one or more pieces of counterfeit money, besides what was so uttered or tendered; he shall be deemed and taken to be a common utterer of false money; and being thereof convicted shall suffer a year's imprisonment, and find sureties for his good behaviour for two years more: and for a second offence he shall be adjudged guilty of felony without benefit of clergy."

Uttering or tendering base coin.

Second offence, felony without clergy.

Pardon on discovery.

By § 4. the corruption of blood is saved; and by § 8. any offender out of prison discovering two or more persons guilty of any of the said offences, so as they be thereof convicted, shall be pardoned. By § 5. offenders shall be indicted, arraigned, tried, and convicted by such like evidence aud in such manner as counterfeiters of the coin; with a proviso that the prosecution be commenced within six months next after the offence committed.

Trial and evidence.

Limitation of time.

(*a*) Made perpetual by stat. 39 G. 3. c. 45.

By § 9. "If any person be convicted of uttering or tendering any false or counterfeit money as aforesaid, and shall afterwards be guilty of the like offence in any other county or city, the clerk of the assize or clerk of the peace (*a*) of the county or city where such conviction was had, shall, at the request of the prosecutor, or any other on his majesty's behalf, certify the same by a transcript in a few words, containing the effect and tenor of such conviction, for which certificate 2*s*. 6*d*. and no more shall be paid; and such certificate being produced in court shall be sufficient proof of such former conviction."

15 G. 2. c. 28. Certificate of former conviction.

This statute also mentioning counterfeit money generally, must be confined to the gold and silver coin of the realm. 1 *Hale*, 211.

Cirwan's case.

Francis Cirwan was indicted (*Oxford Sum. Ass.* 1794. 1 *East's P. C.* 182.) for "unlawfully uttering and tendering in payment to *J. H.* ten counterfeit halfpence, knowing them to be counterfeit;" and this was laid in the one count against the form of the statute, and in another generally. The defendant was convicted on the general count, it being admitted at the trial that there was no statute applicable to the fact. But upon reference to all the judges, (*Hil. T.* 1795.) they held the conviction wrong, it not being an indictable offence.

Stat. 15 G. 2. applies to counterfeit money passed by the trick of ringing the changes.

Frank's case, 2 *Leach*, 644. The words of the statute "utter *or* tender in payment" are in the disjunctive, and will therefore apply to an uttering of counterfeit money, though it be not tendered in payment, but passed by the common trick called *ringing the changes*, as in the following case: — The prosecutor having bargained with the prisoner, a jew, who was selling fruit about the streets, to have five apricots for sixpence, gave him a good shilling to change. The prisoner put the shilling into his mouth as if to bite it in order to try its goodness; and returning a shilling to the prosecutor, told him it was a bad one. The prosecutor gave him another good shilling which he also affected to bite, and then returned another shilling saying it was not a good one. The prosecutor gave him another good shilling, with which he practised this trick a third time; the shillings returned by him being in every instance bad. The court held that the words of the statute were sufficient to include this case; and that *uttering and tendering in payment*, were two distinct and independent acts. 1 *Russ.*, 114.

Eliz. Tandy's case. Charging two utterings on the same day, each in a different count, will not warrant a judgment on stat. 15 G. 2. c. 28. § 3.

An indictment on this act charged the prisoner in the first count with having on the 15th of *December*, 39 *G.* 3. uttered to one *G. S.* a counterfeit half-crown, knowing it to be so; and a second count charged her with having on the said 15th of *December*, &c. uttered another counterfeit half-crown to the same person. The prisoner having been convicted on both counts, it was referred to the judges to consider what judgment was proper to be passed on this record; in *Hilary* term, 1799, the judges held,

(*a*) N. B. By this it should seem that the justices of the peace in sessions have power to try such offenders; otherwise this direction to the clerk of the peace to certify the conviction is incongruous; for he is not the proper person to certify what is done in another court, where he is not necessarily supposed to be present; albeit no power is given to the sessions by any express words in this statute to hear and determine such offences.

that this indictment was not sufficient to subject the prisoner to the larger penalty, as for uttering two pieces of counterfeit coin on the same day; *there being no distinct averment of that fact.* And judgment of imprisonment for six months only was given. 1 *East's P. C.* 182. 2 *Leach*, 833.

But where two utterings are charged in one count of the indictment on a certain day therein named, the day will be held to be material, and the fact of an uttering twice on the same day to be sufficiently averred. Thus in *Martin's* case, *Derby Lent Ass.* 1801. 1 *East's P. C. Add.* xviii. 2 *Leach*, 923. *MS. C. C. R.* the indictment charged that the prisoner *on the 14th of February*, &c. uttered base coin to *W. C.*; and that *on the said 14th of February*, &c. he uttered to *J. L.* other base coin, it was held sufficient to warrant the higher punishment of the third section of the statute; the utterings on the face of the indictment appearing to be on the *same* day. And the judges held at a conference upon this case, that though when the day is not material, the fact may be proved on a day different from the day laid, yet where the day is not indifferent, the precise time laid must be proved; and that in this case it must be taken that it was proved that the defendant uttered counterfeit coin at two different times of the same day.

Smith's case. The defendant may be adjudged to suffer the punishment imposed by 15 G. 2. c. 28. § 3. although there be no averment in the indictment, that the defendant was a common utterer of false money.

When *Tandy's* case was under consideration, some doubt was entertained, whether a count charging two such utterings on the same day, to bring an offender within the third clause, should not conclude with an averment that the offender was *a common utterer of false money*, as that clause declares him to be. But this doubt was shortly after solved in the case of *James Smith*, *Maidstone Sum. Ass.* 1799. *cor. Buller, J.* 1 *East's P. C.* 183. 2 *Leach*, 858. who was indicted for uttering counterfeit money knowingly, and having about him at the time of such uttering, other false money. After conviction, judgment was respited, to take the opinion of the judges, whether, to bring the case within the third section, the indictment should not have concluded with a distinct averment, that the defendant was *a common utterer of false money*; or whether there was not the necessary conclusion of law from the facts stated. In *Hil. T.* 1800, the judges, upon search of precedents for many years back, finding that judgment had been given for the greater punishment upon indictments drawn in this form, although some were to be found containing the averment in question, held such averment, though it would not hurt, was not necessary in order to warrant the greater punishment.

In an indictment for a second offence against stat. 15 G. 2. c. 28. § 3. It is not necessary to state that the court on the former trial, did *adjudge* the defendant to be a *common utterer.*

In *Michael's case, O. B. Feb.* 1802. *MS. C. C. R.* 1 *East's P. C. Add.* xix. 2 *Leach*, 938. it was held not to be necessary, in an indictment for a second offence against this statute, to state that the court before which the former trial was had, did *adjudge* the defendant *to be a common utterer.* The objection taken in arrest of judgment in the case referred to, and which was reserved for the opinion of the judges, was this, "that in stating the original record and judgment of the court of quarter sessions (where the defendant had been previously convicted), it is not stated that the court did adjudge the defendant to be *a common utterer*, only that they considered and adjudged the prisoner to be imprisoned twelve months, and to find surety for his good behaviour two years

more;" But the judges held it sufficient that the indictment stated the offence first committed, and the sentence, without stating that he was a common utterer, which, being a denomination of the offence in conclusion of law, need not be stated as forming part of the sentence, and the indictment was therefore held good.

Evidence of knowing money to be counterfeit.

On a prosecution for uttering counterfeit money, the fact of the prisoner having other counterfeit money upon him, or of his having uttered other pieces of money of the same kind, is evidence of his having known that the money which he uttered was counterfeit. 1 *Phill. Ev.* 168. 1 *N. R.* 95.

Uttering foreign base coin.

Provisions of a similar nature to those contained in stat. 15 *G.* 2. *c.* 28. are extended to foreign coin by stat. 37 *G.* 3. *c.* 126. § 4. 1 *East's P. C.* 184.

Having counterfeit coin in possession.

If false or clipt money be found in a man's hands, if he be suspicious, he may be arrested till he have found his warrant. 3 *Inst.* 18. 1 *Haw. c.* 17. § 68. *Hale's Sum.* 21.

The bare possession of counterfeit coin, without some intended use, is not an indictable offence; but the unlawful procuring of counterfeit coin with intent to circulate it, though no act of uttering be proved, is a *misdemeanor* at common law, and where a person is in possession of a large quantity of counterfeit coin, all newly finished, never having been in circulation, and of the same denomination, such possession, unaccounted for, is evidence to go to a jury of the person having procured and acquired such counterfeit coin with intent to circulate the same. *R.* v. *Robinson and Fuller, Launceston Lent Ass.* 1816. *cor. Graham* B. *MS. C. C. R.* and *R.* v. *Heath, Warwick Lent Ass.* 1810, *cor. Bayley* J. *MS. C. C. R.* *R.* v. *Stewart, Bodmin Sum. Ass.* 1814. *cor. Gibbs* C. J. *MS. C. C. R.*

9 & 10 W. 3. c. 21. False silver money what to be done with.

By stat. 9 & 10 *W.* 3. *c.* 21. § 1. Any person to whom any *silver* money shall be tendered, any piece whereof shall be diminished, otherwise than by reasonable wearing, or that by the stamp, impression, colour, or weight thereof, he shall suspect to be counterfeit, may cut, break, or deface such piece; and if any piece so cut, &c. shall appear to be a counterfeit, the person tendering the same shall bear the loss thereof; but if the same shall be of due weight, and appear to be lawful money, the person that cut, &c. the same, shall receive the same at the rate it was coined for. And if any question arise whether the piece so cut be counterfeit, it shall be determined by the next justice of the peace, or chief magistrate in a corporation.

13 G. 3. c. 71.

And by stat. 13 *G.* 3. *c.* 71. § 1. The same is enacted in the case of *gold* money so tendered.

8 & 9 W. 3. c. 26.

And by stat. 8 & 9 *W.* 3. *c.* 26. § 5. If any counterfeit or unlawfully diminished money shall be produced in any court of justice, either in evidence or otherwise, the judge shall cause it to be cut in pieces in open court, or in the presence of a justice of the peace, and then to be delivered to or for the person to whom it belongs.

9 G. 3. c. 37. Paying the poor in base coin. Churchwardens, overseers, or others intrusted to

In order to prevent the parish poor being paid in base or counterfeit coin, by stat. 9 *G.* 3. *c.* 37. § 7. If any churchwarden or overseer of any parish, township, or place, or other person authorised by them to make payments to or for the use of the poor within such parish, township, or place respectively, shall wilfully and knowingly make any such payments in any base or counter-

9 G.3. c.37.

make payments to or for the use of the poor, making the same in any other than lawful money, forfeit not less than 10s. nor more than 20s.

feit money, or in any other than lawful money of *G. B.*; one justice may, and he is thereby required, on complaint, to summon the churchwarden, overseer, or other person charged, and in a summary way, upon his or their non-appearance or confession, or proof upon oath of one witness, adjudge the party so offending to forfeit for each offence a sum not less than 10*s.* nor more than 20*s.*; and to levy the same by distress and sale of the goods and chattels of such offender, and to be applied to the use of any poor person or persons of the parish or place respectively as the justice shall appoint.

Bail.

By stat. 3 *Ed.*1. *c.*15. Persons taken for false money are not bailable by justices of the peace. 1 *Hale*, 372.

Witnesses.

But they must take the examinations and informations, and bind over the witnesses to the proper court, and commit the persons accused. 1 *Hale*, 372.

It is not necessary there should be two witnesses in cases of counterfeiting the coin, as it is in other high treasons: but persons may be convicted according to the course of the common law, by one witness only. *Hale*, 318. 328.

Judgment.

The judgment for high treason, relating to the coin, is to be drawn to the place of execution, and there hanged by the neck till he be dead. 2 *Haw.* *c.* 48. § 5.

But it is generally provided by the several statutes that this shall work no corruption of blood, nor loss of dower. And see 54 *G.*3. *c.*145. *ante*, p. 237.

IV. Bullion.

Bullion.

Bullion signifies properly either gold or silver in the mass; but is here intended to denote those metals in any state other than that of authenticated coin; comprising in this latter sense gold and silver wares and manufactures. The legislature for the prevention of frauds with respect to such bullion have made several provisions. See the statutes collected in 1 *East's P. C.* p. 188. to 194. 1 *Russ.* 95.

59 G.3. c.49.

See also stat. 59 *G.*3. *c.*49. § 11. By which various provisions in divers ancient statutes against melting and exporting of gold and silver coins are repealed.

And by § 12. Certain provisions respecting bullion or molten silver in stats. 6 & 7 *W.* 3. *c.* 17. § 5. and 7. and 7 & 8 *W.* 3. *c.* 19. § 6. are also repealed.

See also stat. 1 & 2 *G.*4. *c.*26. § 4.

By stat. 6 & 7 *W.*3. *c.*17. § 3. If any shall cast ingots or bars of silver, in imitation of *Spanish* bars or ingots, or stamp them in likeness of the *Spanish* stamp, he shall forfeit the same, and also 500*l.*, half to the king and half to the informer.

Counterfeiting Bullion.

8 & 9 W.3. c.26. Blanched copper and other base metal.

By stat. 8 & 9 *W.*3. *c.*26. § 6. After reciting, that whereas several mixtures of metals have been invented in imitation of gold and silver, and blanched copper is principally made use of in imitation of silver; it is enacted, that if any person shall blanch copper for sale, or mix blanched copper with silver, or knowingly buy or sell or offer to sale blanched copper alone, or mixed with silver, or shall knowingly and fraudulently buy or sell or offer to

sale any malleable composition or mixture of metals or minerals, which shall be heavier than silver, and look and touch and wear like standard gold, but be manifestly worse than standard, he shall be adjudged guilty of felony, and being thereof convicted or attainted shall suffer death. § 9. Prosecution to be in three months.

8 & 9 W.3. c.26.

V. Of Tokens.

Bank Tokens.

By stat. 44 *G.* 3. *c.* 71. The governor and company of the bank of *England*, for the convenience of the public, were empowered to issue certain silver dollars, and provision was made against the counterfeiting and uttering counterfeits, and by stat. 51 *G.* 3. *c.* 110. the said governor and company, for the further convenience of the public, were authorised to issue certain silver pieces called tokens, for 3*s.* and 1*s.* 6*d.* each, and by 52 *G.* 3. *c.* 138. persons uttering or vending counterfeits, were subject to certain punishments imposed by the said acts; but in consequence of the late circulation of the new current silver coin, it became unnecessary any longer to continue the said dollars and tokens in circulation, and the further circulation was accordingly prohibited by stat. 57 *G.* 3. *c.* 113. after the 25th of *March* 1818, but extended (by stat. 58 *G.* 3. *c.* 14.) to the 5th of *July* 1818, and further to the 5th of *April* 1819, in payment of taxes, rates, postage, and for stamps, rent, &c.; but by 57 *G.* 3. *c.* 113. § 1. if any person shall hereafter utter, offer, or tender in payment, or give in exchange, or pass, circulate or put off, any such dollars or tokens, whether the value thereof shall be paid or given in money or goods, or in any other manner whatsoever, every person so offending and being thereof convicted upon the oath of one witness, before one or more of H. M.'s justices of the peace acting for the county, riding, city, or place within which such offence shall be committed, shall, for every such dollar or token so uttered, offered, tendered in payment, given in exchange, or passed, circulated or put off, contrary to the prohibition hereinbefore contained, forfeit and pay any sum not exceeding 5*l.* nor less than 40*s.* at the discretion of the justice or justices, who shall hear such offence: provided that nothing in this act contained shall extend to prevent any person from presenting any such dollars or tokens for payment to the governor and company of the bank of *England*, or at any time before the 25th of *March* 1820, or to discharge or excuse the said governor and company from their liability to pay the same before the said 25th of *March* 1820, nor to prevent any person, after the 25th of *March* 1818, from selling or disposing of any such dollars or tokens as aforesaid as old silver, according to the weight thereof, &c.

44 G.3. c.71.
51 G.3. c.110.
52 G.3. c.138.
57 G.3. c.113.
58 G.3. c.14.
57 G.3. c.113. Penalty for afterwards circulating them.
But they may be presented at the Bank till 25 March 1820.
May be sold as old silver.

§ 2. Justices are empowered to hear and determine offences in a summary way, and to levy penalties by distress. § 3. Witnesses not attending on summons to forfeit 20*l.*, to be levied in like manner; one moiety of penalties to go to the informer, and the other to the poor of the parish. § 8. If no distress, offender to be committed to the gaol or house of correction for three calendar months, unless the penalty be sooner paid, or offender gives notice of appeal to the next general quarter sessions, and enters into recognisance

to prosecute such appeal. Determination of the sessions to be final.

Local Tokens.

52 G. 3. c. 157. Tokens not to be circulated after a certain time.

By stat. 52 *G*, 3. *c*. 157. the circulation of local tokens of gold, silver or mixed metal was prohibited after the 25th of *March* 1813, but extended by stat. 53 *G*. 3. *c*. 19. to the 5th of *July* 1813, and by stat. 53 *G*. 3. *c*. 114. after reciting, " that it is expedient that the period limited in the said last-mentioned act for the circulation of tokens should be further extended, it is enacted by § 2. that from and after six weeks from the commencement of the next session of parliament no piece of gold or silver, or of any mixed metal composed partly of gold or silver, of whatever name the same may be, shall pass or circulate as a token for money, or as purporting that the bearer or holder thereof is entitled to demand any value denoted thereon, either by letters, words, figures, mark or otherwise, whether such value is to be paid or given in money or goods, or other value, or in any manner whatsoever; and every person who shall, after six weeks from the commencement of the next session of parliament, circulate or pass as for any nominal value in money or goods any such token, shall for every such token so circulated or passed, whether such person shall be or have been concerned in the original issuing or circulation of any such token, or only the bearer or holder thereof for the time being, forfeit any sum not less than 5*l*. nor more than 10*l*.; at the discretion of such justice or justices of the peace who shall hear and determine such offence; provided that nothing in this act contained shall extend to prevent any person from presenting any such token for payment to the original issuer thereof, or to discharge or excuse any such original issuer from his liability to pay the same.

53 G. 3. c. 114.

Act not to authorise issue of promissory notes under 20*s*.

By § 4. Nothing in this act contained shall extend to authorise or make legal the issuing of any promissory note, not being a token composed of gold or silver, or of mixed metal composed partly of gold or silver, which cannot now be issued by law, nor (by § 5.) to extend to any tokens issued by the bank of *England* or *Ireland*.

52 G. 3. c. 157. 53 G. 3. c. 114.

§ 4. Justices of the peace are empowered to hear and determine offences in a summary way. § 5. Witnesses not attending on summons to forfeit 20*l*. to be levied (as other penalties under these acts) by distress. — § 9. Justices are empowered to detain offenders in custody until return can be had of any warrant of distress. — § 10. In default of distress offenders may be committed to the common gaol or house of correction for three calendar months, unless the penalty be sooner paid, or the offender give notice of appeal to the next general quarter sessions, and enter into recognisance to try such appeal. Determination of sessions to be final.

57 G. 3. c. 46. Copper tokens.

And by stat. 57 *G*. 3. *c*. 46. § 1. [*Mr. Littleton's Act.*] after reciting that " whereas various pieces of copper, and mixed metals composed in part of copper, usually denominated tokens, have lately been and are issued and circulated, by persons residing in various parts of the U. K., in great quantities, as money, and for a nominal value of the metals of which they are composed: and whereas it is expedient that the further making and issuing of such tokens should be prohibited, and that the circulation of those already

made or issued should also be prohibited after a limited period; it is enacted, that from and after the passing of this act no piece of copper, or mixed metal composed in part of copper, of what ever value the same may be, shall be made or manufactured or originally issued as a token for money, or as purporting that the bearer or holder thereof is entitled to demand any value denoted thereon, either by letters, words, figures, marks, or otherwise, whether such value is to be paid or given in money or goods, or in any manner whatsoever; and every person who shall, after the passing of this act, make or manufacture or originally issue, or cause or procure to be made, manufactured or originally issued, or permit or suffer to be so issued, on his or her behalf, as for nominal value in money or goods, any such token, shall for every token so made, manufactured, or issued, or procured or permitted to be so made, manufactured or issued as aforesaid, forfeit any sum not less than 1*l.* nor more than 5*l.* at the discretion of the justice or justices of the peace who shall hear and determine such offence.

57 G.3. c.46. No copper tokens to be made.

or issued.

§ 2. And from and after the 1st of *January* 1818, no piece of copper, or of any mixed metal composed partly of copper, of whatever value the same may be, shall pass or circulate as a token for money, or as purporting that the bearer or holder thereof is entitled to demand any value denoted thereon, either by letters, words, figures, marks, or otherwise, whether such value is to be paid or given in money or goods or other value, or in any manner whatsoever; and every person who shall, after the said 1st of *January* 1818, circulate or pass, as for any nominal value in money or goods, any such token, shall, for every such token so circulated or passed, whether such person shall be or have been concerned in the original issuing or circulation of any such token, or only the bearer or holder thereof for the time being, forfeit any sum not less than 2*s.*, nor more than 10*s.* at the discretion of the justice or justices of the peace, who shall hear and determine such offence; provided that nothing in this act contained shall extend or be construed to extend to prevent any person from presenting any such token for payment to the original issuer thereof, or to discharge or excuse any such original issuer from his liability to pay the same: provided always, that nothing in this act contained shall be construed as affecting any tokens which have been or may be issued by the bank of *England*.

or circulated.

Penalty.

Issuer to be liable for payment.

Not to affect bank of *England* tokens.

§ 3, 4, 5, 6, 7, & 8. relate exclusively to particular tokens issued at *Sheffield* and *Birmingham*.

By § 9. One or more justices acting for the county, riding, city, &c. may hear and determine offences against this act in a summary way, and after summoning the party accused, and also the witnesses on either side, shall examine into the matter of fact, and upon due proof either by confession or oath of one witness shall convict the offender and adjudge the penalty.

Justices to determine offences.

§ 10. If any person summoned as a witness to give evidence before such justice or justices shall neglect or refuse to appear at the time or place appointed, without a reasonable excuse to be allowed by such justice or justices, such person shall forfeit 50*l.*

Witnesses not attending to forfeit 50*l.*

57 G. 3. c. 46. Conviction.

§ 11. Conviction to be made out in the form following; (that is to say,)

BE it remembered, that on the day of the year of our Lord A. B., *having appeared before me* [or *us*] *one* [or *more*] *of his majesty's justices of the peace* [as the case may be], *for the county, riding, city, or place,* [as the case may be], *and due proof having been made upon oath by one or more credible witness or witnesses, or by confession of the party* [as the case may be], *is convicted of* [specifying the offence], *in the sum of* ———. *Given under my hand and seal* [or *our hands and seals*], *the day and year aforesaid.*

Which conviction shall be returned to the then next general quarter sessions of the peace of the county, city, riding, or place where such conviction was made, to be filed and kept among the records of such county, &c.

Clerk of the peace to deliver a copy thereof on payment of 1*s*.

§ 12. It shall be lawful for any clerk of the peace for any county, &c., and he is hereby required, upon application made to him, to cause a copy or copies of any conviction or convictions filed by him under this act, to be delivered to such person or persons, upon payment of 1*s*. for every such copy.

Recovery and distribution of penalties.

§ 13. The pecuniary penalties and forfeitures hereby incurred and made payable upon any conviction, shall be forthwith paid by the person convicted, as follows; one moiety of the forfeiture to the informer, and the other moiety to the poor of the parish or place where the offence shall be committed; and in case such person shall refuse or neglect to pay the same, or to give sufficient security to the satisfaction of such justice or justices to prosecute any appeal against such conviction, such justice or justices shall by warrant under his or their hand and seal, or hands and seals, cause the same to be levied by distress and sale of the offender's goods and chattels, together with all costs and charges attending such distress and sale, returning the overplus (if any) to the owner; and which said warrant of distress the said justice or justices shall cause to be made out in the manner and form following; (that is to say,)

To the constable, headborough, or tithingman of ———

Warrant.

WHEREAS A. B. *of* ———, *in the county of* ———, *is this day convicted before me* [or, *us*] *one* [or, *more*] *of his majesty's justices of the peace* [as the case may be] *for the county of* ———, [or, *for the* ——— *riding of the county of* ———, or, *for the town, liberty, or district of* ———, as the case may be] *upon the oath of* ———, [or, ———, *a credible witness or witnesses*] [or, *by confession of the party*, as the case may be] *for that the said* A. B., *hath* [here set forth the offence] *contrary to the statute in that case made and provided, by reason whereof the said* A. B. *hath forfeited the sum of* ——— *to be distributed as herein is mentioned, which he hath refused to pay: These are, therefore, in his majesty's name to command you to levy the said sum of* ——— *by distress of the goods and chattels of him the said* A.B.; *and if within the space of* ——— *days next after such distress by you taken, the said sum, together with reasonable charges of taking the*

same, shall not be paid, then that you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale, that you do pay one half of the said sum of ——— to ——— of ——— who informed me [or, *us*, as the case may be] *of the said offence, and the other half of the said sum of ——— to the overseer of the poor of the parish* [*township* or *place*] *where the offence was committed, to be employed for the benefit of such poor, returning the overplus* (if any) *upon demand to the said A.* B., *the reasonable charges of taking, keeping, and selling the said distress being first deducted; and if sufficient distress cannot be found of the goods and chattels of the said* A. B., *whereon to levy the said sum of* ———, *that then you certify the same to me* [or, *us*, as the case shall be] *together with this warrant. Given under my hand and seal* [or, *our hands and seals*] *the ——— day of* ———, *in the year of our Lord* ———.

57 G. 3. c. 46.

§ 14. It shall be lawful for such justice to order such offender to be detained in safe custody until return may conveniently be made to such warrant of distress, unless the party so convicted shall give sufficient security for his appearance before the said justice, on such day as shall be appointed for the return of the said warrant of distress (such day not exceeding five days from the taking of such security), which security the said justice is empowered to take, by way of recognisance or otherwise.

For detaining offenders till return of warrant.

§ 15. If upon such return no sufficient distress can be had, the said justice shall commit such offender to the common gaol or house of correction of the county, &c. where the offence shall be committed, for one calendar month, unless the penalty shall be sooner paid, or unless such offender shall give notice to the informer that he intends to appeal to the next general quarter sessions of the peace to be holden for the county, &c. and shall enter into recognisance before some justice, with two sufficient sureties, conditioned to try such appeal, and to abide the order of and pay such costs as shall be awarded at such quarter sessions; which notice of appeal, being not less than eight days before such quarter sessions, such person so aggrieved is empowered to give; and the said justices at such sessions, upon due proof of such notice being given, and of the entering into such recognisance, shall hear and finally determine the causes and matters of such appeal in a summary way, and award such costs to the parties appealing or appealed against, as they the said justices shall think proper; and the determination of such quarter sessions shall be final.

Committal of defaulters.

§ 16. Parishioners may be witnesses, and no conviction shall be quashed for want of form, or be removed by writ of *certiorari*, &c.

Competency of witnesses. Proceedings not to be removed by *certiorari*.

§ 17. All actions shall be commenced within three calendar months after the fact was committed. The defendant may plead the general issue, and if judgment be given against the plaintiff, the defendant shall recover treble costs.

Limitation of actions.

§ 18. Provided that nothing in this act contained shall extend to any copper monies of the realm now current, or to be current by virtue of any proclamation that shall have been or may be issued by H. M.

Not to extend to copper monies of the realm.

A.

A. Information against a Person for Coining.

County of ——— to wit. } *THE information of* A. I. *of* ———, *in the said county of* ———, *labourer, taken upon oath before me* J. P. *esquire, one of his majesty's justices of the peace for the county aforesaid, the* ——— *day of* ——— *one thousand eight hundred and* ———.

This informant, on his oath, deposeth and saith, that on the ——— *day of* ——— *last past, in the dwelling-house of* B. C., *situate at* ——— *in the county aforesaid,* A. O., *of the parish of* ——— *aforesaid, silversmith, had in his possession divers moulds and tools made use of in the clipping and coining of money, and that he this informant saw the said* A. O., *coin several silver shillings, and silver sixpences, in imitation of the lawful coin of this realm; and farther, that he saw the said* A. O. *offer* ——— *shillings thereof in payment to* D. E., *of* ———, *in the said county of* ——— *at* ——— *aforesaid, who refused the same, as justly suspecting that they were counterfeited.*

A. I.

Sworn the day and year aforesaid,
before me,

J. P.

B.

B. Warrant on the above Information.

County of ——— to wit. } To the constable of ——— in the said county of ———.

WHEREAS A. I., *of* ———, *in the county aforesaid,* ——— *hath this day made oath before me* J. P., *esquire, one of his majesty's justices of the peace for the county aforesaid, that on the* ——— *day of* ——— *last,* A. O., *of the parish of* ——— *aforesaid,* ——— *did coin several pieces of money, to wit,* ——— *silver shillings and silver sixpences, at the dwelling-house of* B. C., *situate in* ——— *aforesaid, in imitation of the lawful coin of this realm, and contrary to the laws thereof. These are therefore, in his majesty's name, to require and authorise you to apprehend the said* A. O., *and to bring him before me, or some other of his majesty's justices of the peace for the said county, to be examined in the premises, and to be dealt with according to law. Given under my hand and seal, this* ——— *day of* ——— *one thousand eight hundred and* ———.

J. P. (L. S.)

C. Commitment for uttering counterfeit Coin. C.

County of ——— to wit. } J. P. esq. one of the justices of our lord the king, assigned to keep the peace within the said county. To the constable of ———, in the said county, and to the keeper of the common gaol at ———, in the said county.

THESE are to command you the said constable in his said majesty's name, forthwith to convey and deliver into the custody of the said keeper of the said common gaol the body of A. O., *charged this day upon the oath of* A. I., *before me the said justice, with having on the ——— day of ——— instant, at ———, in the said county, unlawfully and deceitfully uttered and paid to him the said* A. I., *one piece of false money, made and counterfeited to the likeness and similitude of the lawful and current coin of this realm, called a half crown, the said* A. O., *then and there well knowing the said piece of money to have been false and counterfeit. And you the said keeper are hereby required to receive the said* A. O. *into your custody in the said common gaol, and him there safely keep, until he shall be from thence discharged by due course of law. Hereof fail you not. Given under my hand and seal the ——— day of ———, in the year of our Lord one thousand eight hundred and ———.*

J. P. (*L. S.*)

Commitment.

ANCIENTLY there were more felons committed to gaol without mittimus in writing, than were with it: such were all the commitments by constables, watchmen, and private persons arresting for felony, and bringing to the common gaol, long before there were any justices of the peace; and yet mittimuses are not of so ancient date even as they. 1 *Hale*, 610.

Without warrant.

But now, since the *habeas corpus* act, a commitment in writing seems more necessary than it was in former times; otherwise the prisoner may be admitted to bail upon that act, whatsoever his offence may have been.

When a statute appoints imprisonment, but limits no time, it is to be understood that he shall be imprisoned presently. *Dalt.* c. 170.

Commitment when.

Concerning which I will set forth,

§ I. *Who may be committed.*

II. *To what Place.*
[5 H. 4. c. 10.—4 G. 4. c. 64.—15 G. 2. c. 24.—24 G. 2. c. 55.—24 G. 3. c. 55.—60 G. 3. & 1 G. 4. c. 14.]

III. *The Form of the Commitment.*

IV. *Charges of the Commitment.*
[3 J. c. 10. § 1.—27 G. 2. c. 3. § 1. 4.]

V. *That the Gaoler shall receive the Prisoner.*
[4 Ed. 3. c. 10.]

VI. *Shall certify the Commitment.*
[3 H. 7. c. 3.]

VII. *Commitment Discharged.*

I. Who may be committed.

Persons not bailable, or not finding bail.

There is no doubt but that persons apprehended for offences which are not bailable, and also all persons who neglect to offer bail for offences which are bailable, must be committed. 2 *Haw.* *c.* 16. § 1. But not unless a *primâ facie* case is made out against them by witnesses entitled to a reasonable degree of credit; Per *Bayley* J. in *Cox* v. *Coleridge*, 1 *B. & C.* 43. 50. where he expresses himself not satisfied with the authority of *Dalt. c.* 164. p. 407, 408.

Persons guilty of contempt.

And it is said that wheresoever a justice is empowered by any statute to bind a person over, or to cause him to do a certain thing, and such person being in his presence shall refuse to be bound, or to do such thing, the justice may commit him to the goal, to remain there till he shall comply. 2 *Haw. c.* 16. § 2.

A justice of the peace may commit a *feme covert* who is a material witness, upon a charge of felony brought before him, and who refuses to appear at the sessions, to give evidence, or to find sureties for her appearance. *Bennet and Wife* v. *Watson and Another*, *T.* 1814. 3 *M. & S.* 1. *Vide post. tit.* Examination.

15 G. 2. c. 24. Justices of liberty, &c. may commit offenders to house of correction, &c. of the county &c. in which such liberty, &c. situate.

By stat. 15 *G.* 2. *c.* 24. When any person liable by law to be committed to the house of correction, shall be apprehended within any liberty, city, or town corporate, whose inhabitants are contributory to the support and maintenance of the house or houses of correction of the county, riding, or division in which such liberty, city, or town corporate is situate, it shall and may be lawful for the justices of the peace of such liberty, city, or town corporate to commit such person to the house of correction of the county, riding, or division in which such liberty, city, or town corporate is situate; which person so committed shall and may be received, detained, dealt with and ordered, and be set and kept to hard labour, or conveyed and sent away, or discharged, and be subject and liable to the same correction and punishment, to all intents and purposes, as if committed by any justice or justices of peace of the same county, riding, or division.

Persons charged with felony.

If a prisoner be brought before a justice, expressly charged with felony upon oath, the justice cannot discharge him, but must bail or commit him. 2 *Hale*, 121.

Persons charged on suspicion.

But if he be charged with suspicion only of felony, yet if there be no felony at all proved to be committed, or if the fact charged as a felony be in truth no felony in point of law, the justice may discharge him; as if a man be charged with felony for stealing a parcel of the freehold, or for carrying away what was delivered to him, and such like, for which, though there may

be cause to bind him over as for a trespass, the justice may discharge him as to felony, because it is not felony. But if a man be killed by another, though it be by misadventure, or self-defence, (which is not properly felony,) or in making an assault upon a minister of justice in execution of his office (which is not at all felony) yet the justice ought not to discharge him, for he must undergo his trial for it; and, therefore, he must be committed, or at least bailed. 2 *Hale*, 121.

Persons not paying their fine.

But commitment by the justices of the peace almost in all cases, (except for the peace, good behaviour, felony, or higher offences,) is but to retain the party till he hath made fine to the king; and, therefore, if he offer to pay it, or find sureties by recognisance to pay it, he ought not to be committed, but to be delivered presently. *Dalt. c.* 170. *p.* 410.

Commitment where goods a insufficient to pay more than part of a penalty.

Where an offender is convicted in *one* penalty, under a statute providing a corporal punishment, on failure of sufficient distress, and has effects sufficient only to satisfy *part*, it has been held that the goods ought not to be taken, but the corporal punishment should be resorted to. If, however, the same person be separately convicted in *two* penalties, and his goods are sufficient to satisfy *one* only, they ought to be levied under *one* conviction, and the corporal punishment should be nflicted for the other. (See *R.* v. *Wyatt*, 2 *Ld. Raym.* 1195. *Fort.* 132. 11 *Mod.* 54.) But the law never intended that a man should suffer both punishments for *one* conviction. 2 *Ld. Raym.* 1196. *Paley on Convictions,* P. III. Ch. 1. § 4. 1st Ed. p. 185., and note *l.*

As to the power of justices to detain persons convicted in penalties till return made to the distress for the same, see stat. 5 *G.* 4. *c.* 18. § 1. *post. tit.* Distress.

II. To what Place.

5 H. 4. c. 10. To the gaol.

By stat. 5 *H.* 4. *c.* 10. All felons shall be committed to the common gaol, and not elsewhere.

23 H. 8. c. 2.

And by stat. 23 *H.* 8. *c.* 2. Felons shall be imprisoned in the common gaol, which shall be kept by the sheriff. *Vide* 12 *Howell's St. Tri.* 1376.

4 G. 4. c. 64. House of correction.

But by stat. 4 *G.* 4. *c.* 64. § 7. (*tit* Gaols, &c. § XIV. (*a*) Vol. II. p. 722.) idle and disorderly persons, rogues and vagabonds, incorrigible rogues, and other vagrants, shall be committed to some house of correction belonging to such county &c. or place, and such house of correction shall be deemed the only legal place of commitment of any such person.

60 G. 3. & 1 G. 4. c. 14. Power to justices, actin in any place not being a county to ‹ mit offenders to the gaol of the county.

Stat. 60 *G.* 3 & 1 *G.* 4. *c.* 14. After reciting that "whereas the trial of capital offences before justices of peace, within local and exclusive jurisdictions not being counties, may be attended with inconvenience, and it is desirable that some remedy should be provided for the same," enacts, "that the justices of the peace acting within and for any town, liberty, soke or place, not being a county, but having an exclusive jurisdiction for the trial of felonies and misdemeanors committed within the same, shall, from and after the passing of this act (28 *Feb.* 1820) have full power within their respective limits, at their discretion, to commit any person duly charged before them, or any of them, with any capital offence committed within such limits, to the gaol of the county within

30 G.3. & 1 G.4. c.14.

which such town, liberty, soke or place shall be situated, then to be tried at the next session of oyer and terminer or general gaol delivery, to be held in and for such county, in the same manner as if such offence had been committed within any other part of the same county, and as if such person had been committed by any other justice of the same county, not being within such limits."

Justices authorised to bind over witnesses by recognisance, to give evidence at the sessions of oyer and terminer; and transmit depositions taken before to the clerk of the crown, &c.

§ 2. In all cases where any justice or justices of the peace, under the authority of this act, shall commit any person to the county gaol, it shall be lawful for such justice or justices, and he and they is and are hereby authorised and required also to bind over all necessary parties and witnesses by recognisance, to prosecute and give evidence against such offenders at the next sessions of oyer and terminer and general gaol delivery, and to transmit such recognisance, and all depositions taken before him or them relating to the charge, to the clerk of the crown, clerk of assize and other proper officer, to be filed in the court of oyer and terminer and general gaol delivery for such county, to the intent that the same may be used or put in force by the judge or judges of the said court, as he or they shall deem proper, according to law."

Expences of the prosecution to be paid by town or place within which the offence shall be committed.

§ 3. In all cases of any commitments to the county gaol, under the authority of this act, all the expences to which the county may be put by reason of such commitment, together with all such expenses of the prosecution and witnesses as the judge shall be pleased to allow by virtue of any law now in force, shall be borne and paid by the said town, liberty, soke, or place within which such offence shall have been committed, in like manner and to be raised by the same means whereby such expences would have been raised and paid, if the offender had been prosecuted and tried within the limits of such exclusive jurisdiction; and the judge or court of oyer and terminer and general gaol delivery shall have full power and authority to make such order touching such costs and expences as such judge or court shall deem proper; and also to direct by whom and in what manner such expences shall in the first instance be paid and borne, and in what manner the same shall be repaid and raised within the limits of such exclusive jurisdiction, in case there be no treasurer or other officer within the same, who, by the custom and usage of such place, ought to pay the same in the first instance.

Stocks.

Justices may commit certain offenders to the stocks, or other custody, by particular statutes.

Different county.

Generally, if a man commit felony in one county, and be arrested for the same in another county, he shall be committed to gaol in that county where he is taken. *Dalt. c.* 170. *p.* 409.

Yet if he escape, and be taken on fresh suit in another county, he may be carried back to the county where he was first taken. *Dalt. c.* 170. *p.* 409.

24 G.2. c.55.

Also by stat. 24 *G.* 2. *c.* 55. § 1. If a person is apprehended upon a warrant indorsed in another county, for an offence not bailable, or if he shall not there find bail, he shall be carried back into the first county, and there be dealt with according to law. See this act at length, *post.* Vol. V. *tit.* Warrant. See also stat. 15 *G.* 2. *c.* 24. *ante,* § 1. p. 674.

III. The Form of the Commitment.

In whose name.

It must be in writing, either in the name of the king, and only tested by the person who makes it, or it may be made by such person in his own name, expressing his office, or authority, and must be directed to the gaoler, or keeper of the prison. 2 *Haw.* c. 16. § 13.

The commitments mentioned in 2 *Haw. c.* 16. § 13. mean commitments to the custody of sheriffs, gaolers, &c.; but a magistrate may *by parol* order an offender to be detained in custody until he can make out his warrant of commitment. *Still* v. *Walls*, 7 *East*, 533.

So a magistrate, in the case of a breach of the peace within his view, may instantly order the offender to be taken into custody. *Per Cur. S. C.*

It is fit to mention the name of the justice, and his authority, in the beginning of the mittimus, though not always necessary; for the seal and subscription of the justice to the mittimus, is sufficient warrant to the gaoler; for it may be supplied by averment, that it was done by the justice. 2 *Hale*, 122.

The party's name, if known.

It should contain the name and surname of the party committed, if known; if not known, then it may be sufficient to describe the person by his age, stature, complexion, colour of his hair, and the like, and to add that he refuseth to tell his name. 1 *Hale*, 577.

Oath.

It is safe, but not absolutely necessary, to set forth that the party is charged upon oath. 2 *Haw. c.* 17. § 17.

Cause.

It ought to contain the cause, as for treason, or felony, or suspicion thereof; otherwise if it contain no cause at all, if the prisoner escape it is no offence at all; whereas if the mittimus contained the cause, the escape were treason or felony, though he were not guilty of the offence; and therefore for the king's benefit, and that the prisoner may be the more safely kept, the mittimus ought to contain the cause. 2 *Inst.* 52.

And hereupon it appeareth that a warrant or mittimus, "to *answer to such things as shall be objected against him*," is utterly against law. 2 *Inst.* 591.

Also it ought to contain the certainty of the cause; and therefore if it be for felony, it ought not to be generally for felony, but it must contain the special nature of the felony, briefly, as for felony, *for the death of J. S.*, or for burglary *in breaking the house of J. S.*; and the reason is, because it may appear to the judges of the K. B., upon an *habeas corpus*, whether it be felony or not. 2 *Hale*, 122.

In Dr. *Groenvelt's* case, it was resolved, "that the cause of commitment ought to be certain, to the end that the party may know for what he suffers, and how he may regain his liberty." 1 *Ld. Raym.* 213.

But a commitment for *treasonable practices* is legal. *R.* v. *Despard*, 7 *T. R.* 736.

And commitments for high treason in general are good. 2 *Haw. c.* 16. § 16.

Even in cases of felony, the want of the certainty of the cause seems not to make the commitment absolutely void, so as to sub-

ject the gaoler to a false imprisonment; but it lies in averment to excuse the gaoler or officer, that the matter was for felony. 1 *Hale*, 584.

And although it is not necessary to state in a warrant of commitment on a charge of felony, that the act was done "feloniously," yet unless it sufficiently appears on the facts stated in the commitment to be in law a felony, the judges of the court of K. B. are bound to bail the defendant. *R.* v. *Judd*, 2 *T. R.* 255.

R. v. *James Gordon*, *M.* 1777. 1 *B.* & *A.* 572 (*n.*) *James Gordon* was committed to New Prison, *Clerkenwell*, till the next *general* sessions, for assaulting a custom-house officer's assistant in execution of his duty. Motion for a *habeas corpus*, because the stat. 13 & 14 *Car.* 2. *c.* 11. directs that such offender shall be committed, without bail, till the next *quarter* sessions. Writ granted. Afterwards the defendant being brought up, the keeper of New Prison returned the warrant of commitment, which appeared to be to the *general* sessions: but he also returned a warrant of detainer for the same offence, issued the day before he was brought up, by the same justice, which was till the next *quarter* sessions. The defendant, therefore, was remanded without opposition, the warrant of detainer being strictly regular.

If a man be committed for nonpayment of two sums, one of which is not due, the warrant of commitment is bad for the whole. *Ex parte Addis*, *M.* 1822. 1 *B.* & *C.* 90.

Also a warrant of commitment in execution after a conviction must shew before whom the conviction was, as likewise the authority of the person committing. *R.* v. *York*, 5 *Burr.* 2684.

Not to be in the disjunctive.

R. v. *Evered*, *Cald.* 26. *Ante*, p. 131. Two justices committed *Robert Collehole*, an apprentice, for running away from his master. An objection was taken to the *form* of the commitment, for the uncertainty thereof, which ran thus: "As an apprentice *or* servant, for disobeying his indentures *or* articles." Ld. *Mansfield* said, that the objection to the warrant of commitment as running in the disjunctive must undoubtedly prevail. The counsel for the prosecution consented to the prisoner's discharge.

Conclusion.

It must have an apt conclusion; as, if it be for felony, to detain him till he be thence delivered by law, or by order of law, or by due course of law. 2 *Hale*, 123. 2 *Haw.* *c.* 16. § 18.

Where as a criminal, or for contumacy.

But when a man is committed for *contumacy* in refusing to do something which he ought to do, the conclusion ought to be "*until he comply, and perform the thing required,*" for he is entitled to be discharged immediately upon the performance of his duty. If, therefore, an overseer of the poor be committed for refusing to account, the warrant of commitment must conclude, "*there to remain until he shall account.*" *Carth.* 152.

Where for an offence, punishable by indictment or under special authority only.

The true distinction is, that, where a man is committed for any crime, either at common law or created by act of parliament, for which he is punishable by indictment, there he is to be committed, *till discharged by due course of law:* but, when it is in pursuance of a special authority, the terms of the commitment must be special, and exactly pursue that authority. *Nash's case*, *H.* 12 *G.* 3. 2 *Black. Rep.* 806.

But in a recent case, where a parish collector of the rates was committed to the county gaol by warrant of two justices, upon

complaint "for that he having been duly appointed collector of the rates for the parish of *Richmond*, pursuant to stat. 25 *G.* 3. *c.* 41., refused to account, and pay over the monies collected by him by virtue of the act to *W. S*, the person duly authorised to receive them; and the justices adjudged that he should be committed to the gaol, there to remain without bail or mainprize, until he should have made a true and fair account, and until such money, as upon the said account should appear to be remaining in his hands, should be paid by him or his sureties to *W. S.*, and they required the keeper of the gaol to receive and safely keep him "*until he should be discharged by due course of law,*" it was contended that the warrant was void; a *habeas corpus* having been obtained, and the prisoner brought up under it, (after argument) Ld. *Ellenborough* C. J. said, "if there was any uncertainty on the face of the commitment, I should have agreed with the argument. But coupling the premises with the conclusion, is it not in effect the same as if the warrant had directed the gaoler to detain the party until he had accounted? We must read the warrant as if the magistrates had in the conclusion recited over again the adjudication." *Le Blanc* J. said, "Some precise authority ought to be shewn to justify the court in adopting the objection made to this warrant. When the party has accounted and paid over the money, he will be entitled to be discharged by due course of law." The prisoner remanded. *Goff's case, M.* 55 *G.* 3. 3 *M. & S.* 203.

Goff's case.

Where a conviction of an overseer, under stat. 17 *G.* 2. *c.* 38., was, for not delivering over to the succeeding overseers "a certain book, belonging to the parish, called *The Bastardy Ledger*," and the adjudication and warrant of commitment thereon was, "*until he shall have yielded up all and every the books concerning, &c.;*" the court of K. B. held that both the adjudication in respect to the imprisonment, and the commitment made in pursuance thereof, were in that particular a clear excess of jurisdiction, and the imprisonment thereunder a trespass in the committing magistrates, for which the action was maintainable, the warrant being void *in totó*. *Groome* v. *Forrester*, 5 *M. & S.* 314. See the case more fully stated, Vol. IV. *tit.* "Poor" (*Overseers.*) § IV. (1.) p. 245.

A commitment for a contempt being a commitment for punishment, *must be for a time certain*, and consequently a commitment for a contempt till the defendant discharged by due course of law, is bad.

R. v. *James*, *T.* 3 *G.* 4. 5 *B. & A.* 894. *Campbell*, on a former day, moved for a writ of *habeas corpus* to the keeper of the gaol for the county of *Caermarthen*, to bring up the body of the defendant, on the ground that he had been illegally committed by two justices of the peace, for contempt, under the following warrant of two justices: "Receive into your custody the body of *Thomas James*, sent by us and charged by us, upon view, for insulting behaviour towards us, by telling us that we were biassed and prejudiced in our conduct towards him as magistrates, in the due execution of our office as magistrates of the county of *Caermarthen*, and keep him in custody until he shall be discharged by due course of law." He contended, first, that justices of the peace, not sitting in a court of sessions, had no power to commit for a contempt; and, secondly, upon the facts disclosed in his affidavit, that the defendant had not been guilty of any contempt for which he could lawfully be committed. In addition to these objections, there was a third, which appeared upon the face of the warrant. For, at all events, as this was a commitment for punishment, it ought to have been for a time certain,

R. v. James.

and as there was no course of law by which the defendant could be discharged, such a commitment, if valid, amounted to perpetual imprisonment. *Abbott* C. J. (without giving any opinion upon the power of a justice of peace to commit for a contempt,) This warrant appears to us to be bad, for not committing for a time certain. Take the writ. The defendant being now brought up, under the *habeas corpus*, *Campbell* moved that he might be discharged. *Taunton* appeared for the magistrates, and stated, that he had affidavits of the facts of the case, to shew the nature of the contempt, and that he meant to contend, that the magistrates were justified in committing for a contempt.— *Abbott* C. J. Supposing a contempt had been committed, and the magistrates to have had power to commit for the contempt, can you contend that a commitment in this form is valid? *Taunton* admitted, that he could not support the validity of the warrant. Defendant discharged. (*a*)

If the conclusion be irregular, it doth not seem to make the warrant void, but the law will reject that which is surplusage, and the rest shall stand; so that if the matter appear to be such, for which he is to remain in custody, or be bailed, he shall be bailed or committed as the case requires, and not discharged, but the wrong conclusion shall be rejected. 1 *Hale*, 584.

Remanding the prisoner on defective commitment.

But though a warrant of commitment for felony be informal, yet if the *corpus delicti* appear in the depositions returned to the court, they will not bail, but will remand the prisoner. The practice in cases of defective commitments was in this case altered, to prevent in future prisoners thus remanded from renewing the same application to another court or judge. *R.* v. *Marks and others*, 3 *East*, 157.

Where no time is limited.

Where a statute appoints imprisonment, but limits no time how long, in such case the prisoner must remain at the discretion of the court. *Dalt. c.* 170. p. 410.

Seal.

It must be under seal; without this, the commitment is unlawful, the gaoler is liable to false imprisonment, and the wilful escape by the gaoler, or breach of prison by the felon, makes no felony. 1 *Hale*, 583.

By the sessions.

But this must not be intended of a commitment by the sessions, or other court of record: for there the record itself, or the memorial thereof, which may at any time be entered of record, are a sufficient warrant, without any warrant under seal. 1 *Hale*, 584.

Time and place.

It should also set forth the time and place at which it is made. 2 *Haw. c.* 16. § 13.

[For the commitment of a rogue and vagabond, see *tit.* Vagrant. Vol. V.]

IV. Charges of the Commitment.

3 J. 1. c 10. Charges to be paid by the offender if able.

By stat. 3 *J. c.* 10. § 1. Every person who shall be committed to the common or usual gaol, within any county or liberty, by any justice of the peace, for any offence or misdemeanor, the said person so

(*a*) See 2 *Hawk. c* 1. § 16. *Rex* v. *Darby*, 3 *Mod.* 139. *Reg.* v. *Wrightson*, 2 *Salk.* 698. *Rex* v. *Revel*, 1 *Str.* 420. *Petit.* v. *Addington*, *Peake's N. P.* 62. *Mayhew* v. *Locke*, 7 *Taunt.* 63. *Bushel's Case*, *Vaugh.* 138. *Rex* v. *Clement*, 4 *B.* & *A.* 218.

to be committed, having means or ability thereunto, shall bear his own reasonable charges for so conveying or sending him to the said gaol, and the charges also of such as shall be appointed to guard him to such gaol, and shall so guard him thither: and if any such person so to be committed shall refuse at the time of his commitment and sending to the said gaol to defray the said charges, or shall not then pay or bear the same, then such justice shall and may, by writing under his hand and seal, give warrant (*post*, p. 685.) to the constable of the hundred, or constable of the township, where such person shall be dwelling and inhabit, or from whence he shall be committed, or where he shall have any goods within the county or liberty, to sell such and so much of the goods and chattels of the said person so to be committed, as by the discretion of the said justice shall satisfy and pay the charges of such his conveying and sending to the said gaol, the appraisement to be made by four of the honest inhabitants of the parish where such goods shall be; the overplus to be delivered to the party to whom the said goods shall belong.

3 J. 1. c. 10.

27 G. 2. c. 3. If not able, to be paid out of the county rate.

And by stat. 27 *G.* 2. *c.* 3. After reciting stat. 3 *J.* 1. *c.* 10. and that whereas "the taxing the parish where such offender was taken to pay such charges, is a great discouragement to parishes to take offenders; and it is also found by experience to be very difficult to make a rate on the inhabitants to raise such tax, whereby constables and others are often kept out of their money by them advanced for the service of the public, and sometimes lose the same, to their very great injury and vexation; for remedy whereof, it is enacted § 1., "that from and after the 24th day of *June*, 1754, when any person not having goods or money within the county where he is taken sufficient to bear the charges of himself, and of those who convey him, is committed to gaol or the house of correction, by warrant from any justice or justices of the peace, then, on application by any constable or other officer who conveyed him to any justice of the peace, for the same county or place," [such justice] "shall upon oath examine into and ascertain the reasonable expences to be allowed such constable or other officer, and shall forthwith, without fee or reward, by warrant under his hand and seal, order the treasurer of the county or place to pay the same, which the said treasurer is hereby required to do, as soon as he receives such warrant: and any sum so paid shall be allowed in his accounts."

Except in *Middlesex*.

§ 4. But in *Middlesex* the same shall be paid by the overseers of the poor of the parish where the person was apprehended.

Rate of charge *per* mile.

Note.—By the *habeas corpus* act 31 *C.* 2. *c.* 21. § 2. the charge of conveying an offender is limited not to exceed 12*d.* a mile; which may be an argument for allowing as much in this case, especially as security is to be given before a man is removed on that act by *habeas corpus* that he shall not escape by the way, which renders guards in that case not so necessary.

Deserter.

A justice before whom a deserter is brought and committed to the county gaol, may, under the authority of these statutes, if the deserter be unable to bear the charges himself, direct the expences of conveying him thither, to be paid by the treasurer of the county, to the constable of the parish who found and apprehended him in the parish, and conveyed him to the gaol. *R.* v. *Pierce*, 3 *M.* & *S.* 62.

V. Gaoler shall receive the Prisoner.

By stat. 4 *Ed.* 3. *c.* 10. If the gaoler shall refuse to receive a felon, or shall take any thing for receiving him, he shall be punished for the same by the justices of gaol delivery. *Dalt. c.* 170. *p.* 410. See stat. 55 *G.* 3. *c.* 50.

But if a man be committed for felony, and the gaoler will not receive him, the constable must bring him back to the town where he was taken; and that town shall be charged with the keeping of him until the next gaol delivery; or the person that arrested him may in such case keep the prisoner in his own house, as it seemeth. *Dalt. c.* 170. *p.* 410.

But in other cases it seems that regularly no one can justify detaining a prisoner in custody out of the common gaol, unless there be some particular reason for so doing; as if the party be so dangerously sick that it would apparently hazard his life to send him to the gaol, or there be evident danger of a *rescous* from rebels, or the like. 2 *Haw. c.* 16. § 9.

VI. The Gaoler shall certify the Commitment.

3 H. 7. c. 3.

By stat. 3 *H.* 7. *c.* 3. The sheriff or gaoler shall certify the commitment to the next gaol delivery.

VII. Commitment discharged.

It seems that a person legally committed for a crime certainly appearing to have been done by some one or other cannot be lawfully discharged by any one but the king, till he be acquitted on his trial, or have an *ignoramus* found by the grand jury, or none to prosecute him on a proclamation for that purpose by the justices of gaol delivery. But if a person be committed on a bare suspicion, without an indictment, for a supposed crime, where afterwards it appears that there was none, as for the murder of a person thought to be dead, who afterwards is found to be alive, it hath been holden, that he may be safely dismissed without any further proceeding, so that he who suffers him to escape is properly punishable only as an accessary to his supposed offence; and it is impossible that there should be an accessary, where there can be no principal, and it would be hard to punish one for a contempt in disregarding a commitment founded on a suspicion, appearing in so uncontested a manner to be groundless. 2 *Haw. c.* 16. § 22, 23.

Mittimus for Felony.

County of } J. F *esquire, &c. one of the justices of our lord the king, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed; To the keeper of the gaol of our said lord the king at* ——— *in the said county, or to his deputy there, and to each of them, greeting: Whereas* A. O. *late of* ——— *in the said county, labourer, hath been arrested by the*

constable of ———, in the said county, for suspicion of a felony by him, as it is said, committed, in stealing a black mare, of the value of 40s. *the property of* A. P. *of ——— in the said county, yeoman; Therefore on the behalf of our said lord the king, I command you and each of you, that you or one of you receive the said* A. O. *into your custody in the said gaol, there to remain till he be delivered from your custody by the law and custom of* England. *Given under my hand and seal at ——— in the said county, the ——— day of ——— in the ——— year of the reign of our said lord ———.*

J. P. (*L. S.*)

Another.

County of ——— } J. P. *esquire,* &c. *To the keeper of the common gaol at ——— in the said county, or to his deputy there; These are in his majesty's name to charge and command you that you receive into your said gaol the body of* A. O. *late of ——— in the said county, yeoman, taken by* A. C. *constable of ——— in the said county, and by him brought before me for suspicion of felony, that is to say, for stealing ———. And that you safely keep the said* A. O. *in your said gaol, until the next general gaol delivery for the said county* [if he be not bailable, or if bailable, then thus,] *until he shall thence be delivered by due course of law. And herein fail you not,* &c. *Given, &c.*

J. P. (*L. S.*)

Another.

County of } J. P. *esquire,* &c. *To the keeper of I send on herewithal the body of* A. O. *late of ——— in the said county, labourer, brought before me this present day, and charged upon the oath of* A. B. *of ——— in the said county ——— with the felonious taking and carrying away forty sheep, the property of ——— which also he hath confessed upon his examination before me* [by which he is not bailable:] *Therefore these are on the behalf of our said lord the king to command you that immediately you receive the said* A. O. *and him safely keep in your said gaol until he be thence delivered by the due order of law. Hereof fail you not, as you will answer for your contempt at your peril. Given under my hand and seal at &c.*

J. P. (*L. S.*)

Or thus, in the King's Name.

County of ——— } GEORGE *the Fourth, by the grace of God, of the United Kingdom of* Great Britain, *and* Ireland, *king, defender of the faith. To the keeper of our gaol at ——— in our said county of ——— or to his deputy, greeting: Whereas* A. O. *late of ——— in our said county, yeoman, is arrested for suspicion of felony, by him, as it is said, committed, in feloniously taking and carrying away ——— of the value of ——— the property of ———. We therefore command you, and each of you, that you receive him the said* A. O. *into your custody in our said gaol, or that one of you do receive him, there to remain*

till he be delivered from your custody, according to the law of our kingdom of England. *Witness* J. P. *esquire, one of the justices assigned to keep the peace in our said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in our said county committed, at* ——— *in the said county, the* ——— *day of* ——— *in the* ——— *year of our reign.*

J. P. (*L. S.*)

Form of a Warrant of Commitment in General.

County of } J. P. *esquire, one of the justices of our lord the*
——— } *king, assigned to keep the peace within the said county. To the constable of* ——— *in the said county, and to the keeper of* ——— *at* ——— *in the said county.*

These are to command you the said constable, in his majesty's name forthwith to convey and deliver into the custody of the said keeper of the said ——— *the body of* A. O. *charged upon the oath of* A. P. *of* ——— *in the said county* ——— *before me with* [here specify the offence.] *And you the said keeper are hereby required to receive the said* A. O. *into your custody in the said* ——— *and him there safely to keep* [here set forth the time,] *or until he shall be thence delivered by due course of law. Herein fail you not. Given under my hand and seal the* ——— *day of* ——— *in the* ——— *year of the reign of his said majesty king* George *the Fourth.*

J. P. (*L. S.*)

Form of Commitment of a Person for further Examination.

County of } J. P. *esquire, one of the justices of our lord the king,*
——— } *assigned to keep the peace within the said county. To the constable of* ——— *in the said county, and to the keeper of the common gaol at* ——— *in the said county.*

These are to command you the said constable, in his said majesty's name, forthwith to convey and deliver into the custody of the said keeper of the said common gaol, the body of A. O. *charged this day before me, the said justice, on the oath of* A. I. *on suspicion of having in the night of the* ——— *day of* ——— *instant, at the parish of* ——— *in the said county, burglariously broken and entered the dwelling-house of the said* A. I. [or as the case may be,] *but inasmuch as* A. W. *a material and necessary witness against the said* A. O. *for the burglary and felony aforesaid, resides at* Chester [or as the case may be,] *a distance of* ——— *miles from the said dwelling-house of the said* A. I. [or as the case may be,] *and he the said* A. I. *hath not been able to procure the attendance of the said* A. W. *but will use his best endeavour so to do on the* ——— *day of* ——— *instant.*

You the said keeper are hereby required to receive the said A. O. *into your custody in the said common gaol until* ——— *next the* ——— *day of* ——— *instant, when you are hereby required to bring the said* A. O. *at* ——— *in the said county, before me or before such others of his majesty's justices of the peace for the said county, as shall be then and there present, to be re-examined and further dealt with according to law. Hereof fail you not. Given*

under my hand and seal the ——— day of ——— in the year of our Lord one thousand eight hundred and ———. (a)

J. P. (*L. S.*)

Order on Overseers (if in Middlesex,) or *Treasurer of the County,* (if in any other County,) to reimburse Expenses of conveying *a Prisoner to Gaol by Stat.* 27 *G.* 2. *c.* 3. § 1. p. 681.

To the treasurer of the county of ——— (or to the overseers of the poor of the parish or place of ———, in the county of *Middlesex.*)

County of ———, to wit. } *WHEREAS application hath been this day made to me, one of his majesty's justices of the peace, in and for the said county, by* A. B. *one of the constables of the parish of ——— in the said county, to allow the reasonable expenses of his conveying* C. D. *to the common gaol at ——— in the county aforesaid, who was by me committed to the said gaol, for* [state the offence.]

It having been duly made appear to me, the said justice, that the said C. D. *hath not money nor goods within the said county, sufficient to bear the charges of himself, and those who conveyed him to the said gaol; and I having, upon oath, examined into the expenses thereof, and made due enquiry into the premises, do hereby ascertain and allow the reasonable expenses thereof, at the sum of ——— which I hereby order and require you the treasurer of the said county* [or, *overseers*] *forthwith to pay the said* A. B. *Given under my hand and seal this ——— day of ——— in the year of our Lord one thousand eight hundred and ———.*

J. P. (*L. S.*)

Warrant of Distress for Expenses when a Person is committed to Gaol. See stat. 3 *J.* 1. *c.* 10. § 1. *p.* 680.

County of ——— } To the constable of ——— in the said county.

WHEREAS by warrant under the hand and seal of me J. P. *esquire, one of his majesty's justices of the peace in and for the said county of ———, bearing date the ——— day of ——— in the year of our Lord one thousand eight hundred and ———* A. O., *late of ——— in the said county, labourer, was committed to the common gaol* [or, as the case may be, (*b*)], *of the said county of ———, for* [here state the offence or misdemeanor], *he the said* A. O. *having means or ability to bear his own reasonable charges for so conveying or sending him to the said gaol* [or, as the case may be], *and the charges of those appointed to guard him thither;*

(*a*) The time of the detainer must be reasonable. — At the present day, the usual practice is stated to be to commit from three to three days. 1 *Chitt. Crim. L.* 74. Vide post. *tit.* Examination.

(*b*) See *Ex parte Evans,* 8 *T. R.* 172.

and whereas A. C. *constable of the parish of* ——— *in the said county, who, in obedience to such warrant conveyed the said* A. O. *to the said common gaol* [or, as the case may be] *of the said county of* ———, *hath made oath before me the said justice, that the said* A. O. *refused at the time of his commitment, and sending to the said common gaol* (or, as the case may be], *to defray the said charges of conveying him as aforesaid, and did not then pay nor hath since paid the same, which said charges amount to the sum of* ——— *These are, therefore, to command you to sell such and so much of the goods and chattels of the said* A. O. *as shall satisfy and pay the said sum of* ———, *being the charges of such his conveying to the said gaol* [or, as the case may be] *the appraisement to be made by four of the honest inhabitants of the parish where such goods and chattels shall be; and I do hereby order and direct the goods and chattels so to be distrained, to be sold and disposed of, at the expiration of four days from the time of taking such distress, unless the said sum of* ——— *for which such distress shall be made, together with the reasonable charges of taking and keeping such distress, shall be sooner paid, returning the overplus upon demand to him the said* A. O., *the reasonable charges of taking, keeping, and selling the said distress being first deducted. And if sufficient distress cannot be found of the goods and chattels of the said* A. O., *whereon to levy the said sum of* ———, *that then you certify the same to me, together with this warrant. Given under my hand and seal at* ——— *in the said county of* ———, *the* ——— *day of* ——— *in the year of our Lord one thousand eight hundred and* ———.

J. P. (*L. S.*)

For commitments upon particular cases, see the several titles in this book: and particularly title Vagrants, Vol. V.

Common Prayer.

See Burn's Ecclesiastical Law, *Tyrwhitt's* Ed. *tit.* Public Worship.

[1 El. c. 2.— 13 & 14 C. 2. *c.* 4.]

Impugners of book of common prayer.

IMPUGNERS of the form of worship in the church of *England*, established by law, and contained in the book of common prayer; of the 39 articles: of the rites and ceremonies of the church; and the episcopal government; shall be excommunicated *ipso facto*, and not restored but by the bishop or archbishop on their repentance. *Can.* 5, 6, 7.

1 El. c.2. Ministers derogating from the book of common prayer.

By stat. 1 *El. c.* 2. § 4—8. If any parson, vicar, or other minister, that ought to use the common prayer, or to minister the sacraments, shall refuse to do the same, or (wilfully standing in the same) shall use any other form, or shall speak any thing in derogation of the same book or of any thing therein contained; he shall on conviction for the first offence forfeit to the king one year's profit of all his spiritual promotions, and be imprisoned for six months; for the

second offence, shall be deprived of all his spiritual promotions, and be imprisoned for a year; and for the third offence, shall be deprived of all his spiritual promotions, and be imprisoned during life. And if he has no spiritual promotion, he shall for the first offence be imprisoned for a year; and for the second during life. See 1 *East's P. C.* 9.

But this shall not restrain the spiritual court from proceeding against these offenders; and they may be deprived by the said court, according to the course of the spiritual law, for the first offence. 1 *Haw. c.* 7. § 4. 1 *East's P. C.* 10.

1 Eliz. c. 2. Any person depraving the book of common prayer.

By stat. 1 *El. c.* 2. § 9—13. & 20. If any person whatsoever shall in plays, songs, or by other open words, speak any thing in derogation of the same book or any thing therein contained; or shall by open fact cause or procure any minister in any place to say common prayer openly, or to minister any sacrament, in other form, or shall interrupt or let any minister to say the said common prayer; he shall (being indicted for the same at the next assizes) forfeit to the king for the first offence 100 marks, and for the second 400 marks; which if not paid in six weeks after conviction, he shall suffer six months' imprisonment for the first offence, and twelve months for the second; and for the third offence, shall forfeit all his goods and chattels, and be imprisoned during life.

13 & 14 C. 2. c. 4. Resident incumbent to read the common prayer once a month, though he keep a curate.

By stat. 13 & 14. *C*, 2. *c*. 4. § 7. Where an incumbent resides upon his living, and keeps a curate, the incumbent himself (not having lawful impediment to be allowed by the bishop) shall at least once a month openly and publicly read the common prayer, and (if there be occasion) administer the sacraments and other rites of the church; on pain of *5l.* to the poor, on conviction, by confession, or oath of two witnesses, before two justices; and in default of payment in ten days, the same to be levied by the churchwardens or overseers by distress and sale, by warrant of such justice.

Compounding. See *tits.* **Information**, Vol. III.; **Felony**, § III. Vol. II.

Confession.

CONFESSION is twofold, either *expressed* or *implied*.

Express.

An *express* confession is, where a person directly confesses the crime with which he is charged; which is the highest conviction that can be. 2 *Haw. c.* 31. § 1.

But it is usual for the court, especially if it be out of clergy, to advise the party to plead and put himself upon his trial, and not presently to record his confession, but to admit him to plead. 2 *Hale*, 225.

Implied.

An *implied* confession is where a defendant in a case not capital doth not directly own himself guilty, but in a manner admits it by yielding to the king's mercy, and desiring to submit to a small fine; which submission the court may accept of if they think fit, without putting him to a direct confession. 2 *Haw. c.* 31. § 3.

Defendant's confession may be given in evidence.

It seems that the confession of the defendant himself, whether taken on an examination before justices of peace in pursuance of the statutes of *Ph. & M.* upon a bailment or commitment for felony, or in discourse with private persons, hath always been allowed to be given in evidence against the party confessing, but not against others. 2 *Haw. c.* 46. § 3.

The general rule on this subject was very fully considered in a judgment delivered by Mr. Justice *Grose* in a case reserved for the opinion of the twelve judges, and it is, that a free and *voluntary* confession, made by a prisoner accused of an offence, is receivable in evidence against him, whether such confession be made at the moment he is apprehended, or while those who have him in custody are conducting him to the magistrates, or even after he has entered the house of the magistrate for the purpose of undergoing his examination. *Lamb's case,* 2 *Leach,* 552. 1 *Phill. on Ev.* 103, 104.

Before any confession can, however, be received in evidence, it must be ascertained *with certainty,* that such confession was neither obtained by threats nor promises, but was perfectly free and voluntary, without any menace, or undue terror imposed upon the prisoner; 2 *East's P. C.* 657. for, says Ld. *Hale,* I have often known the prisoner disown his confession upon his examination, and hath sometimes been acquitted against such his confession. 2 *Hale,* 284, 285.

Confession must be voluntary.

The confession of a person accused of an offence must be voluntary, not obtained by improper influence, nor drawn from him by means of a threat or promise; for, however, slight the promise or threat may have been, a confession so obtained cannot be received in evidence on account of the uncertainty and doubt, whether the prisoner might not have been induced from motives of fear or of interest to make an untrue statement.—1 *Phill. Ev.* 104.

If a confession be obtained by undue means, nothing the prisoner afterwards says, under the influence of having made that confession, can be received.

R. v. *Sarah Nute, M.* 1800, *MS. C. C. R.*—The prisoner was suspected of setting fire to an outhouse; her mistress pressed her to confess, and told her among other things, if she would repent and confess, *God would forgive her,* but she concealed from her that she would not forgive her herself: she confessed. The next day another person in her mistress's sight, though out of her hearing, told her her mistress said she had confessed, and drew from her a second confession. Ld. *Eldon* C. J. (C. P.) allowed the confessions in evidence and the prisoner was convicted. The jury on having the confessions put to them, said they thought the first confession made under a hope of favour here, and the second under the influence of having made the first. On case reserved, the judges held those points were not for the jury, but if Ld. *Eldon* agreed with the jury, which he did, the confessions were not receivable; but many of them thought the expressions not calculated to raise hope of favour here, and if not, the confessions, were evidence.

Confessions, says Mr. J. *Blackstone,* even in cases of felony at the common law, are the weakest and most suspicious of all testimony, ever liable to be obtained by artifice, false hopes, promises

of favour, or menaces; seldom remembered *accurately*, or reported with due precision; and incapable in their nature of being disproved by other negative evidence. 4 *Blac. Com.* 357. *Fost.* 243. *S. P.*

The human mind, under the pressure of calamity, is easily seduced, and liable in the alarm of danger to acknowledge indiscriminately a falsehood or a truth, as different agitations may prevail; and therefore a confession, whether made upon an official examination, or in discourse with private persons, which is obtained from a defendant by the impression of hope or fear, however slight the emotion may be implanted, is not admissible evidence; for the law will not suffer a prisoner to be made the deluded instrument of his own conviction. *Gilb. Ev. by Lofft*, 137.

A confession forced from the mind by the flattery of hope, or by the torture of fear, comes in so questionable a shape, when it is to be considered as the evidence of guilt, that no credit ought to be given to it, and therefore it is rejected. A confession so obtained, so far from accelerating and clearing, impedes and fouls the current of justice, by often causing the acquittal, not only of the accuser by confession, but of those whom he accuses in the first instance before the magistrate, to save himself. *Per Cur. R.* v. *Jane Warrickshall, O. B. April Sess.* 1783. *cor. Nares* J. *and Eyre* B. 1 *Leach*, 263.

The wisdom of this doctrine may be illustrated by the following case:

Three men were tried and convicted for the murder of Mr. *Harrison*, of *Campden*, in *Gloucestershire*. One of them, under a promise of pardon, confessed himself guilty of the fact. The confession, therefore, was not given in evidence against him, and a few years afterwards it appeared that Mr. *Harrison* was alive. 1 *Leach*, 264. *notis*.

Although confessions improperly obtained cannot be received in evidence, yet if in consequence of such confessions any facts arise, such facts may be given in evidence, because they must exist invariably the same, whether the confession which discloses them be true or false, and justice cannot suffer by their admission. The truth of these contingent facts, however, must be fully and satisfactorily proved independently of, and not coupled with, or explained by the conversation, or confession from which they are derived. *R.* v. *Jane Warrickshall, supra.*

Thus, if in consequence of an extorted confession, stolen goods be found, the fact of the witness having been directed by the prisoner where to find the goods, and his having found them in the place described by the prisoner, is proper to be left to the consideration of the jury. (2 *East's P. C.* 658. *R.* v. *Grant and Craig, Exeter Lent Ass.* 1801. *cor. Le Blanc* J.) But not the acknowledgment of the prisoner's having stolen or put them there, which is to be collected or not from all the circumstances of the case. *R.* v. *Hodge, Wells Sum. Assizes.* 1794. *cor. Heath* J. *Et vide Phill. on Ev.* Ch. V. § 5. p. 103. 6th ed.

So in the case of *Dorothy Mosey*, indicted at the *O. B. February Sess.* 1784, for shop-lifting, evidence was received of goods found in consequence of a confession made by her; and *Buller* J. (present *Perryn B.* who agreed) said that whatever acts are done are

Mosey's case. evidence; but if those acts are not sufficient to make out the charge against the prisoner, the conversation or confession of the prisoner cannot be received, so as to couple it with those acts, in order to make out the subject-matter of proof. His lordship also cited a case in which all the judges had agreed, that although confessions improperly obtained cannot be received in evidence, yet the acts done afterwards may be given in evidence, though they were done in consequence of the confession. 1 *Leach*, 265. *notis*.

In the case of *Richard Harvey*, at *Bodmin Sum. Ass.* 1800, Ld. *Eldon* C. J. said, that where the knowledge of any fact was obtained from a prisoner under such a promise as excluded the confession itself from being given in evidence, he should direct an acquittal; unless the fact itself proved would have been sufficient to warrant a conviction, without any confession leading to it; and he so directed the jury in that case. 2 *East's P. C.* 658.

In *Lockhart's* case, who was indicted for stealing jewels, a confession had been obtained from him upon promises of favour, by which it was discovered that part of the property had been disposed of to a Mr. *Grant*; and the counsel for the prosecution called Mr. *Grant* as a witness to prove the identity of the property. It was objected, that as the discovery of Mr. *Grant* resulted from the illegal confession which had been obtained from the prisoner, he, Mr. *Grant*, was not a competent witness. But the Court said, that the law was clearly settled, that although a confession improperly obtained cannot be given in evidence, yet it can never go to the rejection of the evidence of other witnesses, which are got at in consequence of such a confession. *Lockhart's case, O. B. June Sess.* 1785. 1 *Leach*, 386. 2 *East's P. C.* 658.

Where a prisoner has been once induced to confess upon a promise or threat, he may afterwards suppose it will not be of any use to deny what he has said, and therefore any subsequent confession of the same or like facts, be the distance of time what it may, cannot be admitted as evidence against him. *Per Sutton*, B. *R.* v. *Penelope Edwards*, *Staff. Lent Ass.* 1806. *MS.*

But in a case where hopes had been holden out to a prisoner to confess, and when brought before a magistrate, he refused unless upon conditions, *Buller* J. admitted the general rule with some qualification, but observing that there must be very strong evidence of an explicit warning by the magistrate not to rely on any expected favour on that account, and it ought most clearly to appear that the prisoner thoroughly understood such warning, before his subsequent confession could be given in evidence. 2 *East's P. C.* 658.

It is no objection to the admissibility of a confession, that it was made by the prisoner to a constable, after an admonition from a stranger that he ought to tell the truth, and although such admonition was made in the presence of the constable, and he said nothing thereon.

R. v. *Row*, *Exeter Lent Ass.* 1809. *cor. Chambre* J. *and before all the Judges in E. T.* 1809. *MS. C. C. R.* The prisoner was convicted of larceny, in stealing a quantity of muslins. He was apprehended by a constable at his own lodgings, where many goods of the description of those stolen were found; and while the constable had the goods and the prisoner in his custody, to take to the *Guildhall* before the magistrates, some of the neighbours

who had nothing to do with the apprehension, prosecution, or examination of the prisoner, officiously interfered and admonished the prisoner to tell the truth, and consider his family, which was a large one. — No answer or observation thereon was made by the constable, nor did the prisoner answer them; but he desired the constable to call upon him in an hour at the prison, which he did, and there the prisoner made a full confession, stating in what manner he had been persuaded to join in committing the act, and all the circumstances attending it. His lordship reserved the point whether this confession was admissible in evidence: and, on consideration, the judges thought it was, because the advice to confess was not given or sanctioned by any one who had any concern in the business. Conviction right.

Row's case.

It is no objection that the confession was made under a mistaken supposition that some of the prisoner's accomplices were in custody; not even though some artifice had been used to draw him into that supposition. *R.* v. *Burley, Leicester Lent Ass.* 1818, *cor. Garrow* B. *and before the Judges in E. T.* 1818. 1 *Phil. Ev.* ch. V. § 5. 6th ed. p. 104. See also the case of *James Hill*, otherwise *James Hinde*, otherwise *James Actzen* or *Aitken*, (known also by the name of *John the Painter*) for setting fire to the *Rope House at Portsmouth*, tried at *Winchester*, the 6th of *March*, 1777; *cor. Hotham* B. 20 *Howell's St. Tri.* 1317.

In another case, tried before Mr. Justice *Bayley*, where it appeared that the prisoner, on being taken into custody, had been told by a person, who came to assist the constable, that it would be better for him to confess, but that, on his being examined before the committing magistrate on the following day, he was frequently cautioned by the magistrate to say nothing against himself, a confession under these circumstances before the magistrate was held to be clearly admissible. *R.* v. *Lingate, Derby Lent Ass.* 1815. 1 *Phill. Ev.* 105.

In a third case, where the counsel for the prisoner objected to the admissibility of a confession made before the committing magistrate, and offered to prove that the wife of the constable had told the prisoner, some days before the commitment, that it would be better for him to confess, *Wood* B. overruled the objection, and admitted the confession. The effect of an antecedent promise of favour, in rendering a confession before a magistrate inadmissible, must depend upon the nature of the promise, the time and circumstances in which it was made, and on the situation of the person from whom the promise came. A promise held out by the prosecutor, recently before the examination, or by the constable who had the prisoner in custody, may be supposed to have great influence. On the other hand, a promise made some time before, by some indifferent person, who interfered officiously without any kind of authority, and promised without the means of performance, can scarcely be deemed sufficient to produce any effect, even on the weakest mind, as an inducement to confess. *R.* v. *Hardwick, Nottingham Lent Ass.* 1811. 1 *Phill. Ev.* 105.

In a still later case, it appeared that a constable told the prisoner, he might do himself some good by confessing; the prisoner afterwards asked the magistrate, if it would be any benefit to him to confess; on which the magistrate said, he could not say it would, and the prisoner then declined confessing; but after-

Rosier's case.

wards, in his way to prison, he made a confession to another constable, and he confessed again in prison to another magistrate; eleven judges were unanimous in holding that the confessions were admissible in evidence, on the ground that the magistrate's answer was sufficient to efface any expectation which the constable might have raised. *R.* v. *Rosier and others, E. T.* 1821. *MS. C. C. R.* 1 *Phill. Ev.* 105.

What is a threat or promise.

As to what shall be considered as a threat or promise; it has been held that a confession induced by saying, "*unless you give me a more satisfactory account, I will take you before a magistrate,*" cannot be received in evidence. So also saying to the prisoner that it would be *worse* for him if he did not confess, or that it would be *better* for him if he did, is sufficient to exclude the confession, according to constant experience. *R.* v. *Thompson, O. B. Dec. Sess.* 1783. 1 *Leach,* 291. 2 *East's P. C.* 659.

A confession induced by saying "Tell me "where the "things are, "and I will be "favourable to "you," cannot be given in evidence.

Thomas Cass was indicted at the *O. B.* in *Feb. Sess.* 1784, for stealing, on the 4th of the same mouth, an iron bar, the property of *Edward Meux,* Esq. It was the bar of a window belonging to a public house in *High-street, Bloomsbury,* and the prisoner, on pretence of drinking a pint of beer, contrived to take it away. On going the ensuing evening to the same house, the publican suspecting that he was the person who had stolen the bar, sent for a constable, by whom, on the charge given, he was taken to the watch-house, where he remained all night. On the next morning, the constable, as he was taking him to the magistrates, called with him at the publican's house, and in the conversation which took place, the publican said, "*I am in great distress about my irons; if you will tell me where they are, I will be favourable to you.*" In consequence of which the prisoner confessed that he had taken the property, and told him where it was; but there being no other evidence, *Gould* J. told the jury they must acquit the prisoner; for that the slightest hopes of mercy held out to a prisoner to induce him to disclose the fact, was sufficient to invalidate a confession. 1 *Leach,* 293. *notis.*

Nor where the prosecutor had said that he only wanted his money, &c.

So also, in *R.* v. *Jones,* before *Chambre* J. at *Winchester Lent Ass.* 1809, upon an indictment for stealing money to the amount of 1*l.* 8*s.*, the property of *John Webb,* a private in the *Somerset* militia, it appeared that the prosecutor told the prisoner, when in the custody of a constable, that "*he only wanted his money, and if the prisoner gave him that, he might go to the devil if he pleased:*" in consequence of which the prisoner took 11*s.* 2½*d.* out of his pocket, and said it was all he had left of it. The judges, on case reserved, held the evidence inadmissible. *MS. C. C. R.*

In *Lambe*'s case, before mentioned, the question for the opinion of the judges was, whether a written examination taken by a committing magistrate, and containing a confession, which the prisoner, on hearing it read over to him, admitted to be true, but refused to sign, ought to have been received in evidence, as it was not signed either by the magistrate or by the prisoner; and a majority of the judges held that such a confession would have been evidence at common law, and that it is not rendered inadmissible by any provision in the statutes of *Philip & Mary,* respecting examinations and informations before justices of the peace. If a prisoner's confession, even when not reduced to writing, be evidence against him, *à fortiori,* it must be admissible

when taken down in writing; for, the fact confessed being thus rendered less doubtful, is of course entitled to greater credit; and it would be absurd to say that an instrument is invalidated by a circumstance which gives it additional strength and authenticity. 2 *Leach*, 552. 1 *Phill. Ev.* 103.

Lambe's case.

R. v. *Telicote, York Spring Ass.* 1819. *Cor. Wood* B. 2 *Stark. N. P.* 483. This was an indictment against the prisoner for stealing a heifer. In the course of the evidence for the prosecution, the prosecutor offered the confession of the prisoner before two magistrates, taken under the statutes of *Philip & Mary*. The clerk of the magistrate stated, that he took down the examination from the mouth of the prisoner, and that it was afterwards read over to him, and he was told that he might sign it or not, as he chose, and that he declined to sign it. *Sinclair*, for the prisoner, objected to the reading of the examination under these circumstances, on the ground that it was not a complete examination under the statute of *Philip & Mary*. *Raine*, for the prosecution, contended that the examination might be read; the statutes of *Philip & Mary* did not prescribe any particular form of examination, nor require that it should be signed by the prisoner; and in *Lambe*'s case (2 *Leach*, 552. *supra*.) it had been held, that the examination was evidence, although the prisoner had refused to sign it; but *Wood* B. was of opinion, that the document could not be read. In *Lambe*'s case the prisoner, when the examination was read over to him, said that *it was true;* and here, if the prisoner had said so, the case might have been different. The evidence was accordingly rejected.

After the examination of a prisoner before a magistrate upon a charge of felony has been taken down by the magistrate's clerk, it is read over to him, and he is told that he may sign it or not as he chooses; having declined to sign it, the examination cannot be read in evidence.

The King v. *Sexton, MS.* The prisoner (with two others) was tried before Mr. Justice *Best*, at the *Summer Ass.* for the city of *Norwich*, 1822, for burglary. Whilst the prisoner was in custody he said to the officer who had the charge of him, "*If you will give me a glass of gin, I will tell you all about it.*" Two glasses of gin were given to him, and he made a confession of his guilt. The officer left the prisoner, and afterwards wrote down from recollection what the prisoner said to him. What the officer wrote was read over to the prisoner before the committing magistrate, who told the prisoner that the offence imputed to him affected his life, and that a confession might do him harm. The prisoner said, that what had been read to him was the truth, and signed the paper. — *Best* J. There are two objections to the admissibility of this evidence. The confession was very improperly obtained by the officer. Police officers must not be permitted to tamper with prisoners to induce them to make confessions; no kind of tampering is so dangerous as the giving them spirituous liquors. Had the magistrate known that the officer had given the prisoner gin, he would, no doubt, have told the prisoner that what he had already said could not be given in evidence against him, and that it was for him to consider whether he would make a second confession. If the prisoner had been told this, what he afterwards said would be evidence against him; but for want of this information, he might think that he could not make his case worse than he had already made it, and under this impression might sign the confession before the magistrate. If a confession, so obtained, were allowed to be proved at the trial of a prisoner, however careful a magistrate might be that a prisoner should not be entrapped into a

Confessions ought to be taken in the very words used by a prisoner.

If improperly obtained by police officers giving prisoners liquor, &c. are inadmissible.

R. v. Sexton.

confession, an over zealous constable might defeat the humane provisions of the law, by so practising on the hopes and fears of a prisoner just before he came into the magistrate's presence, as to make him, when before the magistrate, appear to make an uninfluenced and voluntary confession, when every sort of trick had been made use of. I will not on this ground allow this confession to be read. But we have not the confession of the prisoner; we have only the officer's recollection of it, put into writing when the prisoner was not present, and in the language of the officer, and not in the words used by the prisoner. If a confession be not taken in writing, we must be content with the recollection of the witness who proves it, because we cannot have any more certain account of it. I will receive nothing as a confession in writing that was not taken down from the mouth of the prisoner in his own words, nothing that he says that has any relation to the subject being omitted, nor any thing added, except explanations of provincial expressions or terms of art. The reading this paper to the prisoner, and his acknowledgment that it was correct, does not remove the objection. By the change of language, a very different complexion might be given to the story from what it had when it came from the mouth of the prisoner, and which he might not discover when it was read over to him. The lower orders of men have but few words to convey their meaning, and they know as little of expressions that they are not in the habit of using, as if they belonged to another language. I will not receive this paper in evidence, and I hope that I shall not find a police officer again employed in preparing, either the depositions of witnesses or the confessions of prisoners. *Alderson*, counsel for the prosecution, then said, that *Dallas* C. J. had refused to receive, at a former assizes at *Norwich*, a confession, because it was not in the prisoner's own words.

Examination of a prisoner ought not to be on oath.

The examination of a person accused ought not to be upon oath. And where on the trial of two persons for sacrilege at *York Sp. Ass.* 1816, the prosecutors tendered in evidence the examination of one of the prisoners before the magistrate, which purported to have been "taken on oath," *Le Blanc* J. would not permit a witness to be examined for the purpose of shewing that no oath had in fact been administered to the prisoner, saying, that he could not allow that which had been sent in under the hand of a magistrate to be disputed. 1 *Hale*, 585. *Bull. N. P.* 242. *Kel.* 2. *R.* v. *Smith and Hornage, York Sp. Ass.* 1816. 1 *Stark, N. P.* 242.

Identity of examinations.

The identity of these examinations must be proved at the trial before they can be read in evidence, either by the justice who took them, or by his clerk who wrote them, and that they are the true substance of what the prisoner confessed. *Hale's Sum.* 263. 2 *Hale*, 52. 284.

Whenever a confession is used against a person it must be taken together and not by parcels.

It is an established rule, that whenever a person's confession is made use of against him, it must all be taken together, and not by parcels. If the confession be not in writing, the whole of what the prisoner said must be fully stated, although it may happen that some part of it concerns other prisoners who are tried on the same indictment; in such a case it is not possible to make any selection, for, until the evidence has been heard, it cannot be known what it is, or to whom it relates, and all that

can be done is to direct the jury not to take into their consideration such parts as affect the other prisoners. But a distinction might perhaps be made in this respect, in case the confession has been reduced into writing, if that part which relates to the other prisoners is capable of being separate and detached from the rest, and can be omitted without affecting in any degree the prisoner's narrative against himself. 2 *Haw. c.* 46. § 5.

All those who on their examination own themselves guilty of a felony alleged against them, and are charged in their *mittimus* with the felony so confessed, seem to be excluded from bail; for bail is only proper where it stands indifferent whether the party be guilty or innocent. 2 *Haw. c.* 15. § 40.

Great caution necessary in receiving confessions.

Magistrates cannot be too cautious in receiving confessions, as they very rarely voluntarily flow from a conscientious desire to offer reparation for the injury committed, but are generally made either under an implied or express promise of favour, if not extorted by threat or through fear. This kind of evidence I have always found, in the words of that truly learned judge, Sir *Michael Foster*, to be "the most suspicious of all testimony." *Ed.*

A magistrate should not only be upon his guard against extorted, but also against collusive confessions. A remarkable instance of this kind is mentioned by Mr. *Dickenson*, as singularly illustrative of the propriety of this caution. Two brothers committed a robbery in a dark night to a large amount, and fled. A younger brother, who was innocent, in order to favour their escape, contrived to draw suspicion on himself; and when examined, tacitly admitted his guilt. He was afterwards committed to prison, and all pursuit of his brothers was discontinued. On the trial, he proved *an alibi* on the clearest and most satisfactory evidence, and was consequently acquitted. In the mean time, the actual felons had safely arrived *in America*, with their plunder. 1 *Chitt. Cr. L.* 85. 1 *Dick. Just.* 460.

And see tit. Evidence, *post*.

Conies. See Game, Vol. II.
Conjuration. See Witchcraft, Vol. V.

Conspiracy.

§ I. *What it is.*
[33 Ed. 1. st. 2.]
II. *How punishable.*

I. What it is.

CONSPIRACY is when two or more combine together to execute some act for the purpose of injuring a third person.

By the common law.

1. By the common law there can be no doubt but that all confederates whatsoever, wrongfully to prejudice a third person, are

highly criminal; as where divers persons confederate together by indirect means to impoverish a third person, or falsely and maliciously to charge a man with being the reputed father of a bastard child, or to maintain one another in a matter whether it be true or false. 1 *Haw. c.* 72. § 2.

By statute 33 Ed. 1. st. 2.

2. And conspiracy by statute is as follows: *Conspirators be they that do confeder or bind themselves by oath, covenant, or other alliance, that every of them shall aid and bear the other falsely and maliciously to indict, or cause to indict, or falsely to move or maintain pleas; and such as retain men in the country with liveries or fees for to maintain their malicious enterprises; and this extendeth as well to the takers as to the givers: And stewards and bailiffs of great lords, which by their office or power undertake to bear or maintain quarrels, pleas, or debates, that concern other parties than such as touch the estate of their lords or themselves.*

From this definition of conspirators, it seems clearly to follow, contrary to the opinion of Ld. *Coke,* that not only those who actually cause an innocent man to be indicted, and also to be tried upon the indictment, whereupon he is lawfully acquitted, are properly conspirators, but that those also are guilty of this offence who barely conspire to indict a man falsely and maliciously, whether they do any act in prosecution of such conspiracy or not. 1 *Haw. c.* 71. § 2. 2 Ld. *Raym.* 1169.

But an *action* will not lie for the conspiracy unless it be put in execution; for in such case, the *damage* is the ground of the action. 1 Ld. *Raym.* 378.

A conspiracy to prevent a prosecution for a felony, is an offence. 14 *Ves.* 65.

Every confederacy to injure individuals, or to do acts which are unlawful or prejudicial to the community, is a conspiracy. 4 *Blac. Com.* 137. (n.) Thus, journeymen confederating and refusing to work unless for certain wages, may be indicted for a conspiracy, notwithstanding the statutes which regulate their work and wages, do not direct this mode of prosecution; for the offence consists in the *conspiring,* and not in the refusal, and all conspiracies are illegal, although the subject-matter of them may be lawful. *R.* v. *Journeymen Taylors of Cambridge,* 8 *Mod.* 11. 320.

A bare conspiracy to do a lawful act to an unlawful end is a crime, though no act be done in consequence thereof. Suppose there is a conspiracy to let lands of 10*l.* a-year value to a poor man, in order to get him a settlement, or to make a certificate man a parish officer, or a conspiracy to send a woman big of a bastard child into another parish to be delivered there, and so to charge that parish with the child; certainly these are crimes *indictable. Per cur. R.* v. *Edwards and others,* 8 *Mod.* 321.

If a man and woman marry in the name of *another,* for the purpose of raising a specious title to the estate of the person whose name is assumed, it is a conspiracy. *R.* v. *Robinson and Taylor, O. B. Oct.* 1746. 1 *Leach,* 37.

It is an indictable offence to conspire on a particular day by false rumours to raise the price of the government funds, with intent to injure the subjects who should purchase on that day; for the purpose itself is mischievous, it strikes at the price of a vendible commodity in the market, and if it gives it a fictitious price, by means of false rumours, it is a fraud levelled against all

the public, for it is against all such as may possibly have any thing to do with the funds on that day. The offence is not raising the funds simply, but in conspiring by false rumours to raise them on that particular day; for to raise the funds may be an innocent act, but to conspire to raise them by illegal means, and with a criminal view, is an offence. To raise them by false rumours is by illegal means. An indictment for such an offence need not specify the particular persons who purchased as the persons intended to be injured, for the conspiracy is the thing which constitutes the crime; and it is sufficient if the indictment state the conspiracy as it existed at the time when the crime was complete. It might have been detected before any purchases were made, or the mischief was effected, yet that would not have altered the offence; because the parties had done every thing in their power, and all that was essential to complete the crime when they had formed the conspiracy, and used illegal means for effecting it. Their criminality must depend on their own act, and not on the consequences that ensue from it. *R.* v. *De Berenger and others*, 3 *M & S.* 67.

Per Bayley J. *S. C.*

One person alone cannot be guilty of a conspiracy, 1 *Haw. c.* 72. § 8.: but one person may be prosecuted for having conspired with others, and may be tried and convicted alone, if the others escape or die before the time of trial, or the finding of the bill. 1 *Stra.* 193. 2 *Stra.* 1227. And if all but one be acquitted, and it is not stated as a conspiracy with certain persons unknown, the conviction of the single defendant will be invalid and no judgment can be passed on him. *Poph.* 202. 3 *Burr.* 1262. 12 *Mod.* 262. 1 *Haw. c.* 72. § 8., but if an action on the case in the nature of a conspiracy be brought against several persons and all but one be acquitted, yet judgment may be given against that one only. 1 *Haw. c.* 72. § 8.

And where two conspire and one dies, the survivor may still be indicted for the conspiracy. 2 *Stra.* 1227. *R.* v. *E. Nicholls.* 13 *East*, 412. (*n.*)

No such prosecution is maintainable against a husband and wife alone, because they are esteemed but as one person in law. 1 *Haw. c.* 72. § 8.

Persons acting separately may be guilty of a conspiracy.

But in the case of *R.* v. *Cope and others*, 1 *Stra.* 144. The husband and wife and servants were indicted for a conspiracy to ruin the trade of the prosecutor, who was the king's card-maker. The evidence against them was, that they had at several times given money to the prosecutor's apprentices, to put grease into the paste, which had spoiled the cards. But there was no account given that ever more than one at a time was present, though it was proved they had all given money in their turns. It was objected that this could not be a conspiracy; for several persons might do the same thing, without having any previous communication with each other. But it was ruled, that the defendants being all of a family, and concerned in making of cards, it would amount to evidence of a conspiracy.

In a prosecution for a conspiracy, the actual fact of conspiring need not be proved; but it may be inferred from circumstances, and the concurring conduct of the defendants. *R.* v. *Parsons*, 1 *Black. Rep.* 392.

If the indictment lay the offence to be an unlawful conspiracy, this, whether it be to charge a man with *criminal* acts, or such only as may affect his *reputation*, is fully sufficient. The several

charges in the indictment are not to be considered as distinct and separate counts, but as one and the same united and continued offence, pursued through its different stages. *R.* v. *Rispal,* 1 *Black. Rep.* 368.

An indictment against several persons for conspiring together, "*by indirect means,*" to prevent one *H. B.* from exercising the trade of a tailor, was held good, without stating the mode. The illegal combination is the *gist* of the offence, and it is enough to state the conspiracy and the object. *R.* v. *Eccles and others,* 1 *Leach,* 274. 13 *East,* 230. (n.)

So also in a recent case, an indictment charging that the defendants conspired by divers false pretences, and subtle means and devices, to obtain from *P. D.* and *G. D.* divers large sums of money, and to cheat and defraud them thereof, was held sufficient; for the gist of the offence being the conspiracy, if that fact and its object be stated, the particular means and devices need not be set out. *R.* v. *Gill and Henry.* 2 *B. & A.* 204.

But an indictment will not lie for conspiring to commit *a civil trespass.* *R.* v. *Turner and others,* 13 *East,* 228. In which case, Ld. *Ellenborough* C. J. said, that the case of *R.* v. *Eccles* was considered as a conspiracy in restraint of trade, and so far a conspiracy to do an unlawful act *affecting the public.*

In an indictment against the defendants for a conspiracy to cause themselves to be reputed persons of considerable property, and in opulent circumstances, for the purpose of defrauding tradesmen, the prosecutor may prove *various* instances of their giving a false representation of their circumstances, as overt acts of the conspiracy. *R.* v. *Roberts and others,* 1 *Campb.* 399.

And wherever a sufficient foundation is laid by evidence to go to a jury, of several persons having met for the purpose of a conspiracy, the declarations of any of the parties made at any time, or place, relating to the object of the conspiracy, is evidence as against all. *R.* v. *Salter and others, Kingston Lent Ass.* 1804. *Cor. Hotham* B. 5 *Esp.* 125. But see 1 *Phill. Ev.* 89.

An indictment will not lie for a conspiracy to cheat and defraud a man by selling him an unsound horse. *R.* v. *Pywell and others,* 1 *Stark. N. P.* 402.

An indictment against workmen for conspiracy against their employers, to prevent them from taking any apprentice, was held to be sufficiently proved, by evidence of their having turned out from their employment with intent to compel their masters to dismiss any one apprentice. *R.* v. *Ferguson and Edge, Lancaster Spring Ass.* 1819. *Cor. Wood* B. 2 *Stark. N. P.* 489. — N. B. In Easter term following, the defendants received sentence of fine and imprisonment.

II. Trial and Punishment.

Trial.

A conspiracy being a trespass, and tending to a breach of the peace, is cognizable by the general quarter sessions. *R.* v. *Rispal,* 3 *Burr.* 1321. 1 *Blac. Rep.* 368.

How far the acts or words of one conspirator are evidence

Where several persons are proved to have combined together for the same illegal purpose, any act done by one of the party, in pursuance of the original concerted plan, and with reference to the common object, is in the contemplation of law the act of the

whole party; and, therefore, the proof of such act would be evidence against any of the others who were engaged in the same conspiracy; and further, any declarations, made by one of the party at the time of doing such illegal act, seem not only to be evidence against himself, as tending to determine the quality of the act, but to be evidence also against the rest of the party, who are as much responsible as if they had themselves done the act. But what one of the party may have been heard to say at some other time, as to the share which some of the others had in the execution of the common design, or as to the object of the conspiracy, cannot, it is conceived, be admitted as evidence to affect them on their trial, for the same offence. 1 *Phill. Ev.* 88. 2 *Russ.* 1823.

against the others.

On a prosecution for a crime to be proved by conspiracy, general evidence of an existing conspiracy may in the first instance be received, as a preliminary step to the more particular evidence, by which it is to be shewn that the individual defendants were guilty participators in such conspiracy. In such cases, the general nature of the whole evidence should be opened to the court, and if upon such opening, it should appear that there was no particular proof sufficient to affect the individual defendants, it would be the duty of the judge to stop the case *in limine*, and not to allow the general evidence to be received. *The Queen's case*, 2 *Brod. & Bing.* 310.

So, assuming that an alleged conspiracy to suborn witnesses against the accused party is a legitimate ground of defence, general evidence of an existing conspiracy is admissible, with this qualification, viz. that the proposed evidence should be previously opened to the court, as in the former case, in order to enable the judge to form an opinion of the probability of bringing the evidence home, so as to affect some person whose acts are material and relevant to the issue of the indictment then under trial. *The Queen's case*, 2 *Brod. & Bing.* 311.

All the defendants convicted upon an indictment for a conspiracy must be present in court when a motion for a new trial is made on behalf of any of them. *R.* v. *Teal and others*, 11 *East*, 307. *R.* v. *Askew*, 3 *M. & S.* 9. *R.* v. *Lord Cochrane*, 3 *M. & S.* 10. (*n.*)

So also on a motion in arrest of judgment, the defendants must be personally present in court. *R.* v. *Spragg et al.*, 2 *Burr.* 936.

Punishment. On action.

It is clear that those who are convicted of conspiracy at the suit of the party shall have judgment of fine and imprisonment, and to render the plaintiff his damages. 1 *Haw. c.* 72. § 9.

On indictment or information.

Also it is certain that he who is convicted at the suit of the king of a conspiracy to accuse another of a matter which may touch his life, shall have judgment that he shall lose the freedom and franchise of the law (whereby he is disabled as a juror and discredited as a witness.) 1 *Haw. c.* 72. § 9.

And this is commonly called *villanous* judgment, which is given by the common law, and not by any statute. But it now is the better opinion, that the *villanous* judgment is by long disuse become obsolete, there being no instance of its having been pronounced since the reign of *Edward* the Third; but instead thereof, the delinquents are usually sentenced to fine, imprisonment, and surety for good behaviour. 4 *Blac. Com.* 136, 137. 2 *Bur.* 996. 1027. 1 *Haw. c.* 72. § 9. 7 *edit.*

Previously to the stat. 56 *G*. 3. *c*. 138. in very aggravated cases, the offenders were generally also sentenced to stand in the pillory. — See the trial of Lord *Cochrane* and others, by *Gurney*, 1814.

See also stat. 3 *G*. 4. *c*. 114. *tit.* Judgment, Vol. III.

Constable.

THE office of a constable in executing warrants, is treated of under the titles Arrest and Warrant; and in like manner the other particulars of his duty may be found under the respective titles throughout the book; this title treating only of the office of a constable in general.

§ I. *Of the Antiquity and Origin of Constables.*
[13 Ed. 1. st. 2. c. 6. — 55 G. 3. c. 51.]

II. *Who shall be a Constable.*
[5 H. 8. c. 6. — 32 H. 8. c. 40. — 1 W. c. 18. — 6 & 7 W. c. 4. — 10 & 11 W. c. 23. — 18 G. 2. c. 15. — 31 G. 3. c. 32. — 42 G. 3. c. 90. — 52 G. 3. c. 155. — 57 G. 3. c. 44.]

III. *How chosen and sworn.*
[13 & 14 C. 2. c. 12. — 1 G. st. 2. c. 13. — 3 G. 4. c. 40.]

IV. *His Power as Conservator of the Peace.*

V. *His Duty as a Subordinate Officer to Justices of the Peace, and Punishment for Neglect.*
[27 G. 2. c. 20. — 33 G. 3. c. 55. — 5 G. 4. c. 18. c. 83.]

VI. *His Indemnity and Protection in his Office.*
[7 J. 1. c. 5. — 21 J. 1. c. 12. — 24 G. 2. c. 44. — 1 & 2 G. 4. c. 88.]

VII. *Concerning the Expenses of his Office.*
[3 J. c. 10. — 27 G. 2. c. 3. — 27 G. 2. c. 20. — 18 G. 3. c. 19. — 41 G. 3. U. K. c. 78. — 1 G. 4. c. 37.]

VIII. *Concerning his Account and Removal from his Office.*
[12 G. 2. c. 29. — 13 & 14 C. 2. c. 12.]

I. Of the Antiquity and Origin of Constables. (*a*)

Antiquity of constables in general.

The sundry names of high constables, or constables of lathes, rapes, wapenstakes, hundreds, and franchises, and the divers names also of petty constables, tythingmen, borsholders, borowheads, headborows, chiefpledges, and such other (if there be any) that bear office in towns, parishes, hamlets, tythings, or borowes, are

(*a*) See stat. 1 *G*. 4. *c*. 37. post. § VII., by which justices are empowered to appoint special constables in certain cases.

all in effect but two, that is to say, *constables* and *borsholders*. *Lamb. Const.* 4.

Constable. The word *constable* is evidently a compound; but it seems to be uncertain from whence it has been originally derived.

Borsholders. *Borsholders*, (which is the other general name, and doth contain within it the meaning of tythingmen, borowheads, headborows, thirdborows, and chiefpledges,) is a word compounded of the Saxon *borge, borrow*, or *borhoe*, a pledge, and *ealder*, the elder, chief, or head; and *borshealder* in one word doth mean the chief or head of the sureties or pledges. For the understanding whereof it is to be remembered, that by the ancient laws of this realm (before the coming of king *William* the conqueror) it was ordained for the more sure keeping of the peace, and for the better repressing of thieves and robbers, that all freeborn men should cast themselves into several companies, by ten in each company; and that every of those ten men of the company should be surety and pledge for the forthcoming of his fellows; so that if any harm were done by any of these ten against the peace, then the rest of the ten should be amerced, if he of their company that did the harm should fly, and were not forthcoming to answer to that wherewith he should be charged. And for this cause, the companies are yet in some places of *England*, called *boroes*, of the said word *borge, borrow*, or *borhoe*, signifying a pledge or surety; and in other places they are called *tythings*, because they contain (as hath been said) the number of ten men with their families. And even as ten times ten do make an hundred, so because it was then also appointed that ten of these companies should at certain times meet together for their matters of greater weight, therefore that general assembly, or court, was and yet is called a *hundred*. Furthermore, it was then also ordained that if any man were of so evil credit, that he could not get himself to be received into one of these tythings or borows, then he should be shut up in prison, as a man unworthy to live at liberty amongst men abroad. Now whereas every of these tythings or borows did use to make choice of one man amongst themselves to speak and to do in the name of them all, he was therefore in some places called the tythingman, in other places the boroes elder, (whom we now call borsholder), in other places the borohead or headborow, and in some other places the chiefpledge, which last name doth plainly expound the other three that are next before it; for head or elder of the boroes and chief of the pledges are all one; and in some shires, where every third borough hath a constable, there the officers of the other two are called *thirdborowes*. And in these tythings or boroes sundry good orders were observed; and amongst others, first, that every man of the age of 21 years should be sworn to the king. Then, that no man should be suffered to dwell in any town or place, unless he were also received into some such suretyship and pledge as is aforesaid. Thirdly, that if any of these pledges were imprisoned for his offence, then he ought not to be delivered without the assent of the rest of his pledges. Again, that no man might remove out of one tything or boroe to dwell in another, without lawful warrant in that behalf. Lastly, that every of these pledges should yearly be presented and brought forth by their chiefpledge at a general assembly for that purpose,

Origin of hundreds.

which we yet in remembrance thereof do call the *view of frank-pledge*, or the leet court. *Lamb Const.* 6, 7.

In some places at this day there is both a tythingman and constable, where the tythingman is as it were a deputy to execute the office in the constable's absence; but there are some things which a constable hath power to do, that tythingmen cannot intermeddle with; for the constable may do whatever the tythingman may do, but not, *e converso*, the tythingman not having an equal power with the constable. But in places where there is no constable, the office and authority of tythingman seems to be all one under a different name. 1 *Bla. Com.* 357.

Antiquity of high constables.

By the statute of *Winchester*, 13 *Ed.* 1. *st.* 2. *c.* 6., *in every hundred and franchise two constables shall be chosen to make the view of armour; and they shall present defaults of armour, and of suits of towns, and of highways, and such as lodge strangers in uplandish towns, for whom they will not answer.*

From hence Lord *Coke* and others will have it, that high constables are no ancienter than this statute. But Mr. *Hawkins* (agreeably with *Lambard, Dalton*, and other authorities) says, that it seems to be the better opinion that both constables of hundreds, which are commonly called high constables, and also constables of tythings, which are at this day commonly called petty constables or tythingmen, were by the common law, and not first ordained by the said statute of *Winchester;* for that statute doth not say that there shall be such officers constituted, but clearly seems to suppose that there were such before the making of it. 2 *Haw. c.* 10. § 33.

Their duty.

In short, the truth of the matter seems to be this; the far greatest part of the business of high constables at this day is not at all appropriated to them as high constables; but only as officers to execute the precepts of the justices of the peace, which any other person may do as well as they. The original and proper authority of an high constable, as such, seems to be the very same and no other, within his hundred, as that of the petty constable within his vill; and therein, most probably, he is coeval with the petty constable. He has the superintendence and direction of all petty constables within his district; and he is in a manner responsible for their conduct, since he is bound to notice and to present their defaults, for his neglect of which duty he is representable himself. The other usual branches of this office, such as the surveying of bridges, the issuing of precepts concerning the appointing of overseers of the poor, surveyors of the highways, assessors, and collectors of the land tax and window duties, and in like manner the viewing of armour by the above-mentioned statute, are in him, not of necessity, but as matter of convenience, and it is discretionary in the justices whom they will appoint to be their officers in these cases; others have been superadded to their office, for the like reason of convenience, by sundry acts of parliament, such as the issuing of precepts for the licensing of alehouses, for the levying of county rates, and for returning lists of jurors; since one person can do all much easier and cheaper than so many different persons.

55 G. 3. c. 51. High constables to give security.

And by stat. 55 *G.* 3. *c.* 51. § 19. Justices are empowered to demand and take, whenever they think fit, good and sufficient

security, from the high constables employed in the collecting and levying the county rates. See *post*, tit. "County Rate."

II. Who shall be a Constable.

To be an inhabitant.

No person is qualified to be a constable who is not an inhabitant of the place for which he is to serve. *Field. Pen. Stat.* 331.

And able person.

And every inhabitant may not be a fit person to be appointed to this office, for he ought to be of the abler sort of parishioners; and if a very ignorant or poor person be chosen, he may by law be discharged, and an abler person appointed in his room. *Dalt.* c. 28.

No man that keeps a public house ought to be a constable. *Per Holt* C. J. 6 *Mod.* 42. *Et vide* 1 Ld. *Raym.* 138

Women.

It hath been said, that a custom in a town that the inhabitants shall serve the office of constable by turns, according to the situation of their several houses, is not good; for that by such a course it may come to a woman's turn to be a constable, as an inhabitant of one of those houses; yet we find such customs allowed to be good in later books; and it seems, that the consequence of the reasoning above mentioned may well be denied, since a woman in such case may procure another to serve for her. 2 *Haw.* c. 10. § 37. 1 *Bac. Abr.* 683. *Vide* 2 *T. R.* 406.

Physicians.

Also it seems, that a practising physician, being chosen constable in pursuance of such custom, has no remedy for his discharge; for that there are no precedents of this kind, and his calling is private. 2 *Haw.* c. 10. § 41.

But in *R.* v. *Clarke,* 1 *T. R.* 682. it was holden that the king may exempt any person, or whole bodies corporate, from serving the office of constable; subject however to this restriction, that the exemption be not extended so far as to prevent the existence of the office in any particular place.

By stat. 32 *H.* 8. *c.* 40. The president, commons, and fellows of the faculty of physic in *London* shall not be chosen constables.

Surgeons.

And by stats. 5 *H.* 8. *c.* 6. and 18 *G.* 2. *c.* 15. Surgeons in *London* shall be freed and exempted from the office of constable.

On an indictment against *Pond*, a surgeon, for refusing to be constable, it was moved to the attorney-general that a *noli prosequi* might be granted, for that by stat. 5 *H.* 8. *c.* 6. (and by stat. 32 *H.* 8. *c.* 40. for the incorporating of barbers and surgeons, which incorporation was dissolved by the above stat. of 18 *G.* 2.) all persons of the corporation of surgeons within *London* are exempt; and though it had been held that physicians are not exempt, yet by the equity of those statutes, and by the custom of the realm, *all* surgeons have been allowed the same privilege; and therefore a *noli prosequi* was allowed, unless cause shewn. And no cause was shewn, the reporter says, that ever he heard of. *R.* v. *Pond, Com.* 312.

But in a more recent case it has been held, that a member of the Barber's company in the city of *London* is not exempted from serving the office of constable. *R.* v. *Chapple, Sitt. after M. T.* 1811. 3 *Campb.* 91.

Apothecaries.

By stat. 6 & 7 *W.* c. 4. Apothecaries in *London* and within seven miles thereof, being free of the company of apothecaries, and also those in the country who have served seven years' apprenticeship, shall be exempted from the office of constable.

Attornies.

Also it seems certain that if a sworn attorney, or other officer of the courts at *Westminster*, be chosen into this office, he may have a writ of privilege for his discharge, by reason of his necessary attendance in those courts: and it hath been resolved, that such officers shall have this privilege, not only where there is no special custom concerning the election of constables, but also where they are chosen by a particular custom, in respect of their estates, or otherwise; for that no such custom shall be intended to be more ancient than the usages of those courts, and therefore shall give way to them. 2 *Haw.* c. 10. § 39.

Barristers at law, Servants to members of parliament.

And upon the like reasons, it is taken for granted, that practising barristers at law, and the servants of members of parliament, have the same privilege; but there seem to have been no resolutions to this purpose. 2 *Haw.* c. 10. § 39.

Aldermen of London.

Also it hath been resolved that an alderman of *London*, for the like reasons, is not compellable to be a constable. 2 *Haw.* c. 10. § 40.

Captain of the guards.

But it hath been holden that a captain of the king's guards, being presented to serve as constable, in pursuance of a custom in respect of his lands in a town, cannot claim this privilege; for that notwithstanding he is bound by his office to personal attendance on the king's person, yet such office being of late institution, shall not prevail against an ancient custom. 2 *Haw.* c. 10. § 41.

Where there are others sufficient.

Yet if such an officer as before mentioned, or a gentleman of quality who hath no such office, or a practising physician, be chosen constable of a town, which hath sufficient persons besides to execute this office, and no special custom concerning it, perhaps he may be relieved by the king's bench; but it seems that even a custom cannot exempt fitting persons from serving the office of constable, where there are not sufficient besides them to execute it. But these points seem not to be settled. 2 *Haw.* c. 10. § 41.

Seaman.

A seafaring man serving the office of headborough is not thereby exempted from being impressed. *Ex parte Fox.* 5 *T. R.* 276.

Militia-man.

By stat. 42 *G.* 3. c. 90. § 174. No serjeant, corporal, drummer, nor private man, serving in the militia, shall, during the time of such service, be liable to serve the office of constable.

Yeomanry cavalry.

And by stat. 57 *G.* 3. c. 44. § 3. No officer, non-commissioned officer, or effective member of any yeomanry corps, or volunteer cavalry, shall, during the period of his continuing enrolled in, and an effective member of such yeomanry corps, or volunteer cavalry, be compellable or compelled to serve the office of constable in the parish to which he belongs.

Dissenting teachers.

By stat. 1 *W.* c. 18. § 11. Every teacher or preacher in holy orders, or pretended holy orders, that is a minister, preacher, or teacher of a congregation, shall, from the time of his subscription and taking the oaths, be exempted from the office of constable: and by stat. 52 *G.* 3. c. 155. § 9. every teacher or preacher in any congregation or assembly for religious worship of protestants,

who shall employ himself solely in the duties of such teacher, &c. and not follow any trade or other employment for his livelihood except that of *a school-master*, and who shall produce a justice's certificate of having taken and made and subscribed the oaths and declaration specified in stat. 19 *G.* 3. c. 44. (See *post, tit.* Dissenters, § II.) shall be exempt from the civil services and offices specified in stat. 1 *W.* c. 18., (viz. in § 7. *post, tit.* Dissenters, § I.) and from being ballotted to serve, and from other serving in the militia or local militia of any county, &c., in any part of the U. K.

32 G. 3. c. 18.

And by stat. 10 & 11 *W.* c. 23. § 2. 3. The prosecutor of a felon to conviction, shall be discharged from the office of constable. [See *tit.* Felony, § IV. Vol. II.]

Prosecutors of felons.

Inasmuch as the office of a constable is wholly ministerial, and no way judicial, it seems that he may appoint a deputy to execute a warrant directed to him, when by reason of sickness, absence, or otherwise, he cannot do it himself: yet it doth not seem to be settled that a constable can make a deputy, without some special cause. 2 *Haw.* c. 10. § 36.

Whether he may appoint a deputy

In *Medhurst* v. *Wate*, 3 *Burr.* 1259. The high constable appointed a deputy to billet soldiers under the mutiny act: this appointment was by parol only, and the deputy was not sworn. By Ld. *Mansfield* C. J. and the court: the high constable had power by the act to billet soldiers; and he may appoint a deputy to this particular ministerial act. This is a ministerial (not a judicial) act; and a constable may appoint a deputy to do ministerial acts.

In *R.* v. *the Inhab. of Hope Mansell*, *Cald.* 252. it was considered that a constable could appoint a deputy.

And in *R.* v. *Clarke*, 1 *T. R.* 682. it seemed to be admitted as a settled point that a constable may appoint a deputy.

The superior must be answerable for his deputy, upon any miscarriage; unless the deputy is duly allowed and sworn; for then he is constable. *Wood's Inst. b.* 1. *c.* 7.

Where a person is appointed constable, and he procures a deputy to serve for him, who is approved of by the inhabitants and sworn in at the Leet, the liability of the principal is at an end, and he cannot afterwards be called upon to serve the office: if, therefore, the substitute abscond and do not serve, the principal is discharged notwithstanding. *Underhill* v. *Witts*, 3 *Esp.* 56.

Constable discharged if a deputy has been allowed.

By stat. 1 *W.* c. 18. § 7. If any person dissenting from the church of *England* shall be chosen high or petty constable, and shall scruple to take upon him the office in regard of the oaths, or any other matter required to be done in respect of such office, he may execute it by a sufficient deputy by him to be provided, to be allowed by such persons, and in such manner, as such officer should by law have been allowed.

1 W. c. 18. Dissenters appointing a deputy.

And by stat. 31 *G.* 3. *c.* 32. § 7. the like privileges are given to Roman catholics on their taking and subscribing the oath and declaration therein specified.

31 G. 3. c. 32.

III. How chosen and sworn.

Of common right the constable is to be chosen by the jury in the leet, and if the party be present and refuse, the steward may fine him; if absent, the homage must present his refusal at the

By whom to be chosen.

By whom to be sworn.

next court, and then he shall be amerced; also if the party chosen be present, he shall take the oath in the leet; if absent, before the justices of the peace, who still administer the oath to him as conservators of the peace at common law. *Fletcher* v. *Ingram*, 1 *Salk*. 175. 1 *Ld. Raym*. 69, 70.

Anciently the practice was that in every hundred where there was a feudal lord, the constables were sworn in and admitted by the lord or his steward in his leet; but where there was no such feudal lord, the sheriff in his torn had the swearing and placing of them in; also if there was no feudal lord of the hundred, an annual officer was chosen, who was to preside over the whole hundred, who was called the high constable; but if the hundred were feudal, as it often anciently was, then such lord of the hundred administered the office himself. 1 *Bac. Abr. Const*. A. p. 683.

Choosing high constables.

But now the usual manner is, that the high constables of hundreds are chosen either at the quarter sessions of the peace; or if out of the sessions, then by the greater number of the justices of the division where they reside; and likewise that they are sworn either at the sessions, or by warrant from the sessions; which course hath been often allowed and commanded by the justices of the assize. *Dalt. c*. 28.

The reason thereof may be this, as hath been intimated above, namely, that their office at present doth not so much consist in executing the office of high constable as such, as in executing the justices' precepts, which they may do for the most part, whether they be indeed high constables or not.

Petty constables appointed by justices of the peace.

And, moreover, every petty constable being a principal peace officer, and it being necessary for the preservation of the peace that every vill should be furnished with one, the justices of the peace have, ever since the institution of their office, taken upon them as conservators of the peace, not only to swear the petty constables, which have been chosen at a torn or leet, but also to nominate and swear those who have not been chosen at any such court, on the neglect of the sheriffs or lords to hold their courts, or to take care that such officers are appointed in them. Also it seems, that such justices have always used for good cause to displace such officers which have been so chosen and sworn by them. And this power of justices of the peace having been confirmed by the uninterrupted usage of many ages shall not now be disputed, but shall be presumed to have been grounded on sufficient authority. And some have carried this point so far, as to allow the justices at their sessions to swear one who was chosen at the leet, and unduly rejected by the steward, who had sworn another in his place. 2 *Haw. c*. 10. § 49.

Dr. *Franchard* was chosen constable of *Milborne Port* at the leet, which immediately adjourned; and he was afterwards sworn in by a single justice of the peace; and upon motion for an information as not being duly sworn, the court held this to be a good swearing. *R*. v. *Dr. Franchard*, 2 *Stra*. 1149.

Where no constable hath been before.

The justices of the county of *Northampton* at their general sessions chose a constable for *Holmby*, and for not coming in to take the oath proceeded against him. Which proceedings being removed by *certiorari* into the king's bench, it was moved on affidavits that there had not been a constable there for fifty years before, and that he might be discharged; alleging likewise, that *Holmby* was a privileged place, and that all the inhabitants were

the duke of *York's* tenants. But the court held that they could not discharge him on motion, and said that they must determine the matter by action of false imprisonment, or some other way; and inclined strongly that he could not any way be discharged. For, *by the Court*, though originally constables were chosen in leets, yet the constable being an officer whose duty it is to keep the peace, the justices may choose him in cases of necessity. *Case of the constable of Holmby*, 2 *Keb.* 557. 1 *Bac. Abr.* 684.

Where the leet shall make default. 13 & 14 C. 2. c. 12. Constables dying or leaving the parish.

However, it is certain that justices of the peace had power to nominate and swear constables, on the default of the torn or leet, before stat. 13 & 14 *C.* 2. *c.* 12., and therefore that they have such authority in some cases not mentioned in that statute, which enacts, (§ 15.) that if a constable shall die, or go out of the parish, any two justices may make and swear a new one, until the lord shall hold a leet, or till the next quarter sessions, who shall approve the officer so made and sworn, or appoint another: and if any officer shall continue above a year in his office, the justices in their quarter sessions may discharge him, and put in another till the lord shall hold a court as aforesaid. 2 *Haw. c.* 10. § 50.

Appointment in towns corporate by charter justices.

Wheatherhead v. *Drewry & others*, 11 *East*, 168. The borough of *Derby* is a town corporate by a charter of *C.* 2., which charter, after creating a mayor and other officers, also declares that certain of these shall be justices of the peace within that borough. Until 1809 there had never been an appointment of a high constable within the borough. In that year there was one appointed; and for levying by distress a rate in the nature of a county rate imposed by the quarter sessions of the borough upon the said borough, an action of trespass was brought against the high constable and two magistrates. And it was held that it was competent to them to create such office, and that stat. 13 *G.* 2. *c.* 18. extended to *charter* justices as well as to justices having commissions immediate from the crown. This doctrine had also been held in the case of *R.* v. *J. Green*, 6 *T. R.* 228.

Mandamus to compel the swearing a constable.

And it seems to be clear at this day that the K. B. hath power by mandamus to compel the court or judge to swear a constable duly chosen. 2 *Haw. c.* 10. § 47.

Where, in an application for a *quo warranto* against a constable, the affidavits in support of the rule stated, that for 50 years back, and as long as deponents could recollect, there had been a custom in the town to elect a constable in a particular mode, but did not expressly state that they believed such custom

R. v. *Lane*, *H.* 2 & 3 *G.* 4. 5 *B. & A.* 488. In *M. T.* 1 *G.* 4. a rule *nisi* was obtained for a *quo warranto* against the defendant as constable of the township of *F.* in the county of *Lancaster*. The affidavits stated, that for 50 years and upwards, and as far back as the deponents could recollect, it had been the usual and established custom for the constable to be elected by the payers of rates at a meeting for that purpose; and that at a meeting so held on the 3d of *October* last, *J. L.* was appointed; but that, notwithstanding, the deputy steward of the court-leet of the wapentake of *Salford* had sworn in the defendant as constable for the year. But none of the deponents expressly stated, that to their belief there had been immemorially such a custom in the town. Cause was about to have been shewn, when the court called upon counsel to answer the preliminary objection, that no immemorial custom was stated in the affidavits. He contended that it was sufficient if facts were there stated from which a jury would necessarily draw that conclusion, and that such facts were stated in this case. *Sed per Curiam.*—It is necessary on the

to be immemorial: Held, that it was not sufficient.

face of the affidavits to state that there is, as the witnesses believe, an immemorial custom to elect in this way; and it is not enough to state facts from whence the conclusion may be drawn, for it may be consistent with these affidavits that the parties making them may know when the custom originated. In the case of *R.* v. *Standard Hill* (4 *M. & S.* 378. Vol. IV. p. 27.) which was an application to have overseers appointed for a vill, it was held to be necessary to swear positively that it was a vill by reputation.—R. D. See *R.* v. *Williamson,* 3 *B. & A.* 582.

Constable refusing to be sworn.

If constables, when chosen, refuse to be sworn, a justice of the peace may bind them over to the assizes or sessions (there to be indicted). *Dalt. c.* 28. *R.* v. *Lane,* 2 *Str.* 920.

But it seemeth there can be no commitment, but only indictment upon the refusal; and, if found against him, to assess a good fine upon him, and then commit him for that cause. *Crawley's case, Cro. Car.* 567.

How punished.

It seems that the sheriff, or steward of the leet, cannot lawfully commit them for such refusal, without more; but it is said that if the party be present in the court, he may be fined; and that if he be absent, and have a certain time and place appointed him by the sheriff or steward, for the taking of the oath before a justice of the peace, and have also express notice of such appointment, and be presented at the next court, for having refused to take it accordingly, he may be amerced; also, it seems that in either case be may be indicted (A) at the assizes or sessions. It is advisable in all pleadings in any action concerning such a fine or amerciament, and in all indictments for such refusal, especially and expressly to set forth the manner of every such election, appointment, notice, and refusal, and before whom the court was holden. And it hath been adjudged that it is insufficient to say in general that the party was duly elected, or lawfully elected, or that he had notice, without setting forth the special circumstances thereof. Also it it said to have been adjudged that an indictment for not finding a sufficient person to serve the office of constable, without shewing that the party refused to serve it himself, is insufficient. 2 *Haw. c.* 10. § 46.

Indictments for refusal. A

Constable's oath.

As the form of a constable's oath, in *Dalton,* doth not contain the hundredth part of the constable's duty, nor indeed the most material instances of it, it may be more eligible (as no particular form is directed by any statute), to swear him (B) to the due execution of his office in general, than to descend to those particulars; lest, by mentioning some parts of his duty, and not others, he may be induced to think that those others are not so necessary.

1 G. st. 2. c. 13. Oaths of allegiance and supremacy.

By stat. 1 *G. st.* 2. *c.* 13. High constables are to take the oaths of allegiance, supremacy, and abjuration, as other persons who qualify for offices; but they are not within the stat. 25 *C.* 2. *c.* 2. as to receiving the sacrament, and subscribing the declaration against transubstantiation; and petty constables are exempted both from the one and from the other.

IV. His Power as a Conservator of the Peace.

Constable a conservator of the peace.

Every high and petty constable are by the common law conservators of the peace. 2 *Haw. c.* 8. § 6. *Crom.* 6. *Dalt. c.* 1.

May commit for an affray in his presence.

And, therefore, if any man shall make an affray or an assault upon another *in the presence of the constable,* or shall threaten to

kill, beat, or hurt another, or shall be in a fury ready to break the peace, the constable may commit him to the stocks, or other safe custody for the present, and after may carry him before a justice or to gaol, until he shall find surety for the peace, which surety the constable himself may also take by obligation, to be sealed and delivered to the king's use; and if the party will not find surety to the constable, he may imprison the party until he shall do it. *Dalt. c.* 1.

It is submitted, that a constable cannot, in case of an affray, arrest without a warrant from a magistrate, unless an actual breach of the peace be committed in his presence; or, in other words, *flagrante delicto.* He cannot arrest of his own authority after the affray is over. See the argument of *Best* Serjt. and the judgment of *Mansfield* C. J. in *Clifford* v. *Brandon*, 2 *Campb.* 367. 371., and *Reg.* v. *Tooley and others*, 2 *Ld. Raym.* 1296., and 1 *Russ. Bk.* 3. *c.* 3. *on Manslaughter.* § 4.

Williams v. *Glenister*, *E.* 1824. 2 *B.* & *C.* 699. Where the parish clerk refused to read in church a notice which was presented to him for that purpose, and the person presenting it read it himself at a time when no part of the church service was actually going on: Held, that although a constable might be justified in removing him from the church and detaining him until the service was over, yet he could not legally detain him afterwards in order to take him before a magistrate. See *tit.* Public Worship, Vol. III.

V. His Duty as a subordinate Officer to Justices of the Peace, and Punishment for Neglect.

Subordinate to the justices of the peace.

It hath always been holden that the constable is the proper officer to a justice of the peace, and bound to execute his warrants; and therefore it hath been resolved that where a statute authorises a justice of the peace to convict a man of a crime, and to levy the penalty by warrant of distress, without saying to whom such warrant shall be directed, or by whom it shall be executed, the constable is the proper officer to serve such warrant, and indictable for disobeying it. 2 *Haw. c.* 10. § 35.

33 G. 3. c. 55. Punishment for neglect of duty.

By stat. 33 *G.* 3. *c.* 55. § 1. Two justices at any special or petty sessions, upon complaint upon oath before them, of any neglect of duty, or of any disobedience of any lawful warrant or order of any justice, by any constable, or other peace or parish officer, (such person having been duly summoned to appear and answer to such charge or complaint,) may impose, upon conviction, any reasonable fine not exceeding 40*s.* upon such constable or other officer, as a punishment for such disobedience or neglect of duty; and, if not paid, such justices so assembled may by their warrant levy the same by distress and sale of the goods of the offender, rendering to him the overplus (if any), after deducting such fine, and the charges of such distress and sale; the fine to be applied and disposed of for the relief of the poor of the parish, township or place where such offender shall reside, at the discretion of justices imposing the same. And for want of such distress, such person shall be committed to the house of correction for any space of time not exceeding ten days.

Justices may impose a fine.

Appeal.

And if any person shall think himself aggrieved by any thing done in the execution of this act, he may appeal to the next ge-

33 G. 3. c. 55.

neral quarter sessions of the county or place where he shall reside, upon giving ten days' notice at least thereof.

§ 2. And no person acting under any such warrant of distress shall be deemed a trespasser *ab initio* by reason of any irregularity in such warrant or proceedings thereupon.

27 G. 2. c. 20.

But by stat. 27 *G*. 2. *c*. 20. § 2. The officer executing such warrant, if required, shall shew the same to the person whose goods and chattels are distrained, and shall suffer a copy thereof to be taken. (*a*)

5 G. 4. c. 83. Penalty on officers neglecting their duties.

By stat. 5 *G*. 4. *c*. 83. § 11. It is enacted, "that in case any constable, or other peace officer, shall neglect his duty in any thing required of him by this act, or in case any person shall disturb or hinder any constable, or other peace officer, in the execution of this (Vagrant) Act, or shall be aiding, abetting, or assisting therein, and shall be thereof convicted upon the oath of one or more credible witness or witnesses, before one or more justice or justices of the peace where such offence shall be committed, every such offender shall, for every such offence, forfeit any sum not exceeding 5*l*.; and in case such offender shall not forthwith pay such sum so forfeited, the same shall be levied by distress and sale of the offender's goods, by warrant from such justice or justices; and if sufficient distress cannot be found, it shall be lawful to and for one or more such justice or justices to commit the person so offending to the house of correction, there to be kept for any time not exceeding three calendar months, or until such fine be paid; and the said justice or justices shall cause the said fine, when paid, to be forthwith delivered to the treasurer of the county, riding, division, or place where such offence shall have been committed, to be by him added to and used as part of the stock of the said county," &c.

On conviction of officers, &c. justices to make order for payment of expences of prosecution.

By § 12. "In case any constable, or other peace officer, shall be convicted before any one or more justice or justices of the peace for any neglect of any duty required of him by this act, or of any disobedience of any lawful warrant, or order of any justice or justices of the peace, issued under the provisions of this act; and in case any two or more justices of the peace shall impose any fine, or direct any penalty to be paid by such officer, under and by virtue of the powers given to justices by stat. 33 *G*. 3. *c*. 55. intituled "*An act to authorize justices of the peace to impose fines upon constables, overseers and other peace or parish officers, for neglect of duty, and on masters of apprentices for ill-usage of such the apprentices, and also to make provision for the execution of warrants of distress granted by magistrates*," or under any other powers enabling such justices in that behalf, then and in every such case it shall be lawful for such justice or justices, upon conviction of any such offender, to reimburse and allow to the person or persons on whose complaint or information such offender shall have been convicted, all necessary costs and expences which such person or persons may thereby have incurred, or by any appeal made in consequence thereof, by making an order under his or their hands and seals, upon the treasurer of the county, riding, division, or place, to pay to such person or persons the amount of such costs and expences, on producing the said order, and giving

(*a*) Perhaps the most correct way may be for the constable to read the warrant slowly, and thus permit a copy to be taken, but upon no account to suffer it to go out of his hands. — *Ed*.

a receipt for the same, and the same shall be allowed the said treasurer in his account."

5 G. 4. c. 83.

In no case is a constable required to part with the warrant out of his own possession; for that is his justification. 1 *East's P. C.* 319. 1 *MS. Sum.* 250.

Constable not to *part* with warrant.

A bailiff or a constable, if they be sworn and commonly known to be officers, and act *within* their own precincts, need not show their warrant to the party, notwithstanding he demand the sight of it: but these and all other persons whatsoever making an arrest ought to acquaint the party with the substance of their warrants. 2 *Haw*, c. 13. § 28. 1 *Hale*, 458. 583. 1 *East's P. C.* 319.

And all *private* persons to whom such warrants shall be directed, and even officers, if they be not sworn and commonly known, and even these, if they act *out* of their own precincts, must shew their warrants, if demanded.

Though it appears to be established as law, that it be not necessary to shew the warrant to the party arrested, it is certainly expedient that whenever an arrest be made by virtue of a warrant, the warrant (if demanded at least) should be produced.

If homicide ensue, the legality of the warrant is material. See what is said on this subject, *per* Ld. *Kenyon* C. J. in *Hale* v. *Roche*, 8 *T. R.* 187

Milton v. *Green & Genner*, 5 *East*, 233. Goods were taken by constables under a warrant of distress, granted by a justice of the peace for the county of *Kent*, directed "To the constables of the lower half hundred of *C.* and *G. in the county of Kent*;" which warrant recited, that the plaintiff, (whose goods were distrained) *of the parish of G. in the said county*, was ballotted for the militia of the said county; and, having refused to serve, &c. was convicted in a certain penalty, for levying which the warrant was granted.—The court of K. B. held, that if the warrant turn out to have been executed within a certain part of the parish of *G. within the jurisdiction of the cinque ports*, and *not within the county of Kent*, the constables are not within the protection of stat. 24 *G.* 2. c. 44. § 6., and may be sued in trespass without the magistrate's being made a defendant.

Constables acting out of the jurisdiction of the justice who grants warrant.

R. v. *Weir and others*, 3 & 4 *G.* 4.—1 *B. & C.* 288. The defendants were indicted for having, at the parish of *Deptford*, in the county of *Kent*, assaulted *James Ritchie*, one of the constables of the parish of *Woolwich*, then and there being in the due execution of his said office. Plea, not guilty. At the trial before *Richards* C. B., at the last *Summer* assizes for the county of *Kent*, it was proved, that in 1821, at the time of the assault, *James Ritchie* was a constable of the parish of *Woolwich*, and that defendant, *Weir*, was engineer to the *Kent* water-works company, and the other defendants were in the employ of the company. On the 27th of *April*, 1821, a warrant (*a*) was issued by the magistrates of *Woolwich*, directed, "To *Charles Serjeant*, one of the collectors of the parish of *Woolwich*, the constables of the said parish, and all others H. M.'s officers whom these may concern;"

Where a warrant was directed "to *A. B.*, to the constables of *W.*, and to all other his majesty's officers:" Held, that the constables of *W.* (their names not being inserted in the warrant) could not execute it out of that district.

(*a*) The king's warrant was issued in pursuance of stat. 3 *G.* 4. c. 102., ten days before the end of this term, directing any two or more of the judges of this court to sit for the despatch of business until the first day of *March*; and *Bayley*, *Holroyd*, and *Best* Js. sat daily after the term in the *Guildhall*, *Westminster*, in the room adjoining the court, and this and the following cases were argued and determined. The Lord Chief Justice sat at Nisi Prius.

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commanding them to distrain upon the goods of the *Kent* water-works company for 803*l.* for the parish of *Woolwich.* On the 18th of *June, Ritchie,* in order to execute that warrant, entered upon some premises belonging to the company, in the parish of *Deptford.* *Weir* requested him to go out, and *Ritchie* refusing, he was forced out, by *Weir* and the other defendants, which was the assault complained of. No other *Woolwich* constable was present, nor was any *Deptford* constable with *Ritchie.* Verdict, Guilty. On shewing cause against a rule to enter a verdict for the defendants, the following authorities were cited; 1 *Hale,* 582. "If a warrant be directed to the constable of *D.*, he is not bound to execute it out of the precincts of his constablewick; but if he doth it out of his constablewick, it is good; and so it was ruled in *Norfolk,* in an action of trespass;" and the same is again laid down in 2 *Hale's P. C. c.* 13. p. 110., which opinion is mentioned without disapprobation by Ld. *Holt,* in the case of *Kendal and others.* 5 *Mod.* 78. In *R.* v. *Chandler,* 1 Ld. *Raym.* 545. Ld. *Holt* was plainly speaking of a warrant to all the officers of a county: he says, "Where a warrant is directed generally to all constables, &c., it shall be taken respectively to each of them within their several districts." [*Bayley* J. Ld. *Holt* immediately afterwards, adds, "For where a precept or warrant is directed to men by the name of their office, it is confined to the districts in which they are officers."] The circumstance that the other constables of *Woolwich* were absent at the time when the warrant was executed, is not of any importance to the present question; for in *Co. Lit.* 181 *b.*, it is said, "If the sheriff, upon a capias directed to him, make a warrant to four or three, jointly or severally, to arrest the defendant, two of them may arrest him, because it is for the execution of justice." And the same principle is stated, as applicable to warrants generally; in *Dalton's Justice, c.* 169., and *Burn's Justice,* tit. Arrest. 23d edit.—Counsel for the rule were stopped by the court.—*Bayley* J. It is of great consequence that magistrates should be careful to direct their warrants in such a manner that the parties to be affected by them may know, that the persons bearing the warrants are authorised to execute them. The importance of giving such information will be easily admitted, when it is remembered, that according to the extent of the officer's authority, his death may be murder, manslaughter, or perhaps justifiable homicide. A magistrate has power to direct his warrant to a particular person by name, and then the latter has an authority coextensive with that of him who confers it. But a warrant may also be directed to a person, not by his name, as an individual, but by the description of his official character; and such a direction may be limited to the officers of a single parish, or may extend to all the officers of a county. In the latter case it is clear, that the instrument must be construed *reddendo singula singulis,* and the authority delegated to such officer is limited to the district for which he is appointed. The present is a middle case, between a direction to an individual by name, and one to all the officers of a county. It is a special direction to the officers of *Woolwich,* by the description of their official character. The question then distinctly arises, whether under such an authority the officers of *Woolwich* were justified in executing the warrant out of that district. I am of opinion, both upon the authorities and the reason of the thing, that, by a direction to a particular person by name, then "to the constables of

Woolwich," then "to all officers," the magistrate gives authority to the constables of *Woolwich*, within the limits of *Woolwich*, and not beyond them. In the case of *The Village of Chorley*, 1 *Salk.* 176, Lord *Holt* says, "If a warrant be directed to the constable by name, commanding him to execute it, though he is not compellable to go out of his own precinct, yet he may if he will, and shall be justified by the warrant for so doing: but if the warrant be directed to all constables, &c. generally, it shall be taken respectively, and no constable can execute the same out of his precinct." The late learned editor of the last edition of that book, in a note, cites the judgment of Ld. *Holt*, in *R.* v. *Chandler*, as implying, that the name of office is sufficient to authorise the constable to execute the warrant out of his district, and that it is not necessary to insert the personal name of the officer, in order to give him that authority. The case cited does not appear to me to warrant the opinion advanced in that note; for Ld. *Holt* uses this expression: "Where a warrant or precept is directed to men by the name of their office, it is confined to the districts in which they are officers:" which certainly implies an opinion, that the constable of a parish cannot beyond the limits of the parish execute a warrant directed to him by the description of his office. The case of *Reg.* v. *Tooley*, 2 Ld. *Raym.* 1296, is important; there the warrant was granted by commissioners, under the 27 *Eliz.*, who were authorised to hear, determine, and punish certain offences within the city of *Westminster*, according to the custom of *London*, and the direction of the warrant was to the constables of the parish of *St. Margaret's, Westminster:* the officer seized the party within the parish of *St. Paul's*, a rescue was attempted, and in the end an assistant of the officer was killed: after much consideration it was held, that the offence was not murder, the authority of the constable being limited to his own parish, although, by the custom of *London*, the constable of one parish may execute a warrant in another. That case applies strongly to the present. In *Blatcher* v. *Kempe, Maidstone Summ. Ass.* 1782. 1 *H. Bla.* 15. *n.* Ld. *Mansfield* certainly observed, that the defendant was not constable of *Shipborne;* but it does not thence necessarily follow, that if he had been constable of *Shipborne*, Ld. *Mansfield* would have held that he was justified in acting beyond the limits of that place. In all probability he merely intended to state, that the question did not arise as to the extent of the authority given to the constable of *Shipborne*. For these reasons I am of opinion, that when a warrant is directed to a constable by his name of office, the authority thereby given does not enable him to act beyond the limits to which his office extends. The constable of *Woolwich* was not then justified in entering the house in *Deptford;* and that being so, the ground of this prosecution fails, and the rule to enter a verdict for the defendants must be made absolute.— *Holroyd* J. I am of opinion, that the constables of *Woolwich* had not, in this instance, any authority to act out of that liberty. A warrant may be directed to officers, as individuals, or to individuals who are not officers: and then they may execute it any where within the extent of the magistrate's jurisdiction. But, when a warrant is directed to persons by the description of their office, that is not a special direction, independent of their character as officers. The warrant in question was directed to one person individually, describing him also as an officer of the parish,

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then "to the constables of the parish," not "to *B.* and *C.* constables of the parish," then "to all other officers," &c. That being the form used, authority was given to the constables of *Woolwich*, because they filled that office, and not as individuals; it therefore extended no further than the district within which they were officers. The warrant might, indeed, have been for the performance of something out of the parish of *Woolwich*, viz., if it had recited that the parties rated had property in *Deptford*, and had ordered a distress to be made upon that property; then the direction to the constables of *Woolwich* might have been considered as a special delegation of authority to them to act out of that parish, otherwise the warrant would have been nugatory as to them. But this is not such a case; and, therefore, upon the principle of the distinction between a direction by the individual name, and the official character, as well as upon the authorities, I think that the constable of *Woolwich* was not justified in acting out of that parish. The case of *Reg.* v. *Tooley* is decisive; that is a case of great authority, having been much considered before judgment was given. The passage cited from Ld. *Hale's P. C.*, taken by themselves, may imply an opinion, that if the direction be to particular persons by their name of office, they may act beyond the limits of that office; but in *R.* v. *Chandler*, one part of Ld. *Holt*'s judgment seems to imply the same thing; yet what he afterwards adds shews that his observation was intended to apply to those cases only where the warrant is directed to particular persons by name; and the same thing appears from what Ld. *Holt* says, in the case of *The Village of Chorley;* and the passages in Ld. *Hale's P. C.* may fairly be construed with the same qualification. From the case of *Blatcher* v. *Kemp* also an argument may *primâ facie* be drawn in favour of this prosecution; but there the court had no occasion to consider how the law would have been, had the defendant been constable of *Shipborne;* they therefore laid that out of their consideration, and gave no opinion upon the point.— *Best* J. I think we are bound to take care that the law relating to the duty of constables shall rest upon broad, plain, intelligible principles, that constables may know where they are to execute warrants, and that the parties to be affected may know when they are to submit to them. Now, it is plain, that magistrates may direct their warrants to officers, either by their names or by the description of their office. If the former mode be adopted, the officer may execute the warrant any where within the ambit of the magistrate's authority; if the latter, then the plain and obvious meaning of it is, that the officer shall not act beyond the precincts of his office. This is the principle which is to be extracted from all the cases, particularly from *Reg.* v. *Tooley.* That case was twice argued, and much considered before judgment was given; and although the statute 27 *Eliz.* gave authority to punish certain offences in the city of *Westminster*, as they might be punished by the custom of *London*, and although by that custom the constable of one parish may execute a warrant in another, yet it was held, that the 27th of *Eliz.* did not extend that privilege to the city of *Westminster;* and that a warrant issued under the provisions of that act, directed to the constables of the parish of *St. Margaret's*, could not legally be executed by them in the parish of *St. Paul's*, although both were within that city. The case of *R.* v. *Chandler* is to the same effect. In *Blatcher* v. *Kemp* Ld. *Mansfield*

did not decide upon the distinction now taken. In order to ascertain the effect of any decision, we should look rather to the principles laid down, than to the special circumstances of the case. Now, the principle there laid down was, that the warrant must be construed *reddendo singula singulis.* If that principle be applied in the present instance, it appears manifestly that the magistrates intended the warrant to be executed by the officers of that place where the property to be seized was situated. The plain rule then is, that where a warrant is directed to any one by name, he may execute it any where within the jurisdiction of the magistrates; but where it is directed by the description of an office, then the officer cannot act beyond the precincts of his office. This rule may serve to avoid disputes as to the authority of peace officers, which frequently produce much inconvenience and mischief. For these reasons, I am of opinion, that this rule must be made absolute.—R. A.

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But now by stat. 5 *G.* 4. *c.* 18., passed 31st *March* 1824, § 6. reciting "that whereas warrants addressed to constables, headboroughs, tithingmen, borsholders, or other peace officers of parishes, townships, hamlets, or places, in their characters of and as constables, headboroughs, tithingmen, borsholders, or other peace officers of such respective parishes, townships, hamlets, or places, cannot be lawfully executed by them out of the precincts thereof respectively, whereby means are afforded to criminals and others of escaping from justice:" for remedy thereof, Enacts, "that it shall be lawful to and for each and every constable, and to and for each and every headborough, tithingman, borsholder, or other peace officer, for every parish, township, hamlet, or place, to execute any warrant or warrants of any justice or justices of the peace, or of any magistrate or magistrates, within any parish, township, hamlet, or place, situate, lying, or being within that jurisdiction for which such justice or justices, magistrate or magistrates, shall have acted when granting such warrant or warrants, or when backing or indorsing any such warrant or warrants, in such and the like manner as if such warrant or warrants had been addressed to such constable, headborough, tithingman, borsholder, or other peace officer, specially by his name or names, and notwithstanding the parish, township, hamlet, or place in which such warrant or warrants shall be executed, shall not be the parish, township, hamlet, or place for which he shall be constable, headborough, tithingman, or borsholder, or other peace officer, provided that the same be within the jurisdiction of the justice or justices, magistrate or magistrates, so granting such warrant or warrants, or within the jurisdiction of the justice or justices, magistrate or magistrates, by whom any such warrant or warrants shall be backed or indorsed."

5 G. 4. c. 18. Constables may execute warrants out of their precincts, provided it be within the jurisdiction of the justice granting or backing the

§ 5. This act does not extend to *Scotland.*

Extent of act

Jones v. *Vaughan*, 5 *East*, 445. A constable executing the warrant of a justice of the peace, and sued in trespass without the magistrate, is within the protection of stat. 24 *G.* 2. *c.* 44. § 6., and entitled to a verdict on proof of such warrant, having first complied with the plaintiff's demand, of a perusal and copy of the warrant before the action brought, though not within *six days* after such demand, as the act directs.

Constable to grant perusal and copy of warrant before action brough

And see *tit.* Affray, § III. *ante*, p. 36.

VI. His Indemnity and Protection in his Office.

7 J. c. 5. Double costs.

By stat. 7 *J.* 1. *c.* 5. (made perpetual by 21 *J.* 1. *c.* 12.) If an action is brought against a constable for any thing done by virtue of his office, he, and also all others which in his aid, or by his command, shall do a thing concerning his office, may plead the general issue, and give the special matter in evidence; and if he recover, he shall have double costs.

Proper county.

§ 5. Such action shall be laid in the county where the fact was committed, and not elsewhere.

No action, if he deliver a copy of the warrant.

24 G. 2. c. 44.

Formerly the constable was bound to take notice of the jurisdiction of the justice; insomuch that if the justice issued a warrant in any matter wherein he had no jurisdiction, the constable was punishable for the execution of it. But now, by stat. 24 *G.* 2. *c.* 44. § 6. it is enacted that no action shall be brought against any constable, headborough, or other officer, or against any person acting by his order, and in his aid, *for any thing done in obedience to the warrant under the hand or seal of any justice of the peace*, until demand hath been made, or left at the usual place of his abode, by the party, or by his attorney, in writing, signed by the party demanding the same, of the perusal and copy of such warrant, and the same hath been refused or neglected for six days after such demand; and if, after compliance therewith, any action shall be brought against such constable, headborough, or other officer, or against such person acting in his aid for any such cause as aforesaid, without making the justice or justices who signed or sealed the said warrant defendant or defendants, on producing and proving such warrant at the trial, the jury shall give their verdict for the defendant, notwithstanding any defect of jurisdiction in such justice or justices. And if such action be brought jointly against such justice or justices, and also against such constable or other officer, &c. on proof of such warrant, the jury shall find for such constable, notwithstanding such defect of jurisdiction as aforesaid; and if the verdict be given against the justice or justices, the plaintiff shall recover his costs against him, to be taxed in such manner by the proper officer, as to include such costs as the plaintiff is liable to pay to such defendant, for whom such verdict shall be found as aforesaid.

Note: *By this it seemeth that the constable ought not to return the warrant to the justice, but to keep it for his own justification; for he cannot grant to the party the perusal of the warrant, unless he hath it; but he must certify to the justice what he hath done in the execution thereof.*

No action but within six months.

And by § 8. No action shall be brought against any constable acting as aforesaid, but within six calendar months after the act committed.

[For this subject, see *tit.* Justices of the Peace.]

Where an officer acted illegally in breaking open outer doors for the purpose of executing a warrant of distress for a church rate, but in the supposed *bonâ fide* execution of his duty; the court of K. B. held that it was a case within the statute, limiting the action to be brought within three months (*a*); the legislature intending to give this protection in cases where he had acted il-

(*a*) 53 G. 3. c. 127. § 12.

legally, through ignorance or inadvertence. *Theobald* v. *Crichmore, H.* 58 *G.* 3. 1 *B.* & *A.* 227.

24 G. 2. c. 44.

Constables acting without warrant, not within the statute.

Acting as aforesaid] that is, under the warrant of a magistrate. If, therefore, a constable acts *without a warrant*, the statute does not apply, and the action against such constable may be brought after the expiration of six calendar months, and at any time within the period allowed by the statute of limitations. Stat. 21 *J.* 1. *c.* 16. *Postlethwaite* v. *Gibson, Midd. Sitt. after M. T.* 41 *G.* 3. *cor. Ld. Kenyon* C. J. 2 *Selw. N. P.* 859. (*n.*) 3 *Esp.* 226. *S. C.* Doubted in *Parton* v. *Williams, infra.* And where a constable acted without a warrant or being called upon to act, but of his own discretion, *Abbott* C. J. held that he was still entitled to the protection of the statute 21 *J.* 1. *c.* 12. By the words in the statute, "*by virtue of his office*" was to be meant, that he was acting under colour of his office, intending to act in the character of a constable; and the venue being misconceived, defendant was acquitted. *Staight* v. *Gee and Carver, Sitt.* at *Guildhall* after *M. T.* 59 *G.* 3. 2 *Stark. N. P.* 445.

And the statute protects all who act in aid, or under the command of such constable, but if such stranger be a *prime mover* and *principal*, he is rot entitled to the benefit. *So ruled per Abbott* C. J. S. C.

Any thing done in obedience to any warrant.] The officer must prove that he acted in obedience to the warrant, and where the justice of peace cannot be liable, the officer is not entitled to the protection of the statute. *Money* v. *Leach*, 3 *Burr.* 1766. *Bell* v. *Oakley*, 2 *M.* & *S.* 259.

But if the officer act in obedience to the warrant, it is immaterial whether the warrant be legal or not. If the warrant direct the officer to seize "stolen goods," and he seizes goods which fall within the description contained in the warrant in other respects, although they turn out not to be stolen, he is still under the protection of the statute. *Price* v. *Messenger*, 2 *Bos.* & *Pull.* 158.

A constable acting under a warrant commanding him to take the goods of *A.* takes the goods of *B.* believing them to belong to *A.* Held that he was entitled to the protection of stat. 24 G. 2. c. 44. § 8., and that an action against him must be brought within six calendar months.

Sarah Parton v. *Joseph Williams and others, H.* 60 *G.* 3. and 1 *G.* 4. 3 *B.* & *A.* 330. Trespass for taking plaintiff's goods and chattels. Plea, not guilty. At the trial before *Richardson* J. at the last *Salop* assizes, the material question of fact was, whether the property seized, which was the stock of a farm at *Little Wenlock*, belonged to the plaintiff who was the widow of a former lessee, or to *William Parton*, her eldest son. The jury, after much contradictory evidence, found a verdict for the plaintiff. It appeared that *William Parton* having served the office of overseer, was 139*l.* in arrear, upon the balance of accounts. The two first-named defendants, *Williams* and *Phipps*, were the succeeding overseers. The goods in question were seized in *September* 1816, under a warrant of distress issued by two justices. The defendant *Gough* was constable of *Little Wenlock*, and the defendant *Cooper* acted in aid of the other three. It was objected at the trial, that the action could not be supported: first, because it had not been brought within six calendar months after the act committed; and secondly, because there had not been any previous demand of a copy of the warrant. The learned judge reserved these points; and in last *Michaelmas* term, a rule nisi for entering a nonsuit was obtained on the former ground only, the

24 G. 2. c. 44.

Parton v. Williams.

Court being clearly of opinion, that the constable, not having acted in obedience to the warrant, which directed him to take the goods of *William Parton* only, the magistrate could not be responsible, and therefore there was no necessity for demanding a copy of the warrant. After argument, — *Abbott* C. J. The legislature manifestly had very different objects in view in the 6th and 8th sections of the statute upon which the present question arises. By the common law, an officer who merely executed the warrant of a magistrate, was answerable for the consequences, if the magistrate acted without authority. One object, therefore, of the legislature was to relieve the officer from that inconvenience, and to provide that if he acted in obedience to the warrant of the magistrate, he should be protected. That was the object of the 6th section, which makes it necessary to demand a copy of the warrant from the officer before he can be sued. If he gives that copy, although the party may be entitled to an action against the magistrate, yet, if he joins the officer in it, the production of the warrant will be a protection to the latter, and will entitle him to a verdict. The 6th section is, therefore, obviously intended to protect the officer in those cases only where the justice remains liable. And it is necessary, in order to bring the officer within it, that he should act most strictly in obedience to his warrant. And in that case the statute gives him an absolute protection at whatever time the suit may be brought against him. To give him any further protection, when he has so acted, does appear to me to be wholly useless. For I cannot understand why a limitation of time is to be imposed upon any action which the legislature has declared not to be maintainable at all. The 8th section must, therefore, have a very different object in view. It enacts, "that no action shall be brought against any justice of the peace for any thing done in the execution of his office, or against any constable, headborough, or other officer or person, acting as aforesaid, unless within six calendar months after the act committed." The justice, therefore, is protected absolutely, unless the action be brought within that period of time; he has the benefit of that statutable limitation for whatever he may do in the execution of his office, although he may do something not authorised by law. This provision, therefore, is evidently intended for the benefit of persons who intend to act right, but by mistake act wrong. The section then proceeds to state, "or against any constable, headborough or other officer or person, *acting as aforesaid*." And it has been argued that these latter words imply that the officer must be acting in obedience to the warrant to be entitled to the protection. But I am of opinion that they are to be taken as equivalent to those words of the 6th section, "acting by his order and in his aid," in which case they are coupled with the antecedent word "person" alone. I have already assigned the reasons which induce me to think that this provision cannot be confined to cases within the protection of the 6th section. It may, perhaps, be too much to say that it will apply in all cases where the officer may have acted in what he may have supposed to have been the due execution of his duty. It is, however, unnecessary to decide that point here. Nor is it necessary to pronounce any opinion upon the case of *Postlethwaite* v. *Gibson*, 3 *Esp.* 226., where

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Lord *Kenyon* thought that unless the officer had a warrant, he was not protected by the 8th section. If it were necessary to determine whether a constable, who without a warrant acts in the execution of his office, and in the discharge of his ordinary duty, be entitled to the protection of this statute, I should wish for further time to consider of it. But in *Postlethwaite* v. *Gibson* the constable was not acting in the execution of his ordinary duty; for it is no part of that duty to arrest a man for a felony, upon the order of a private individual. Any person who is not a constable may equally do it; but both do it at their peril. If it turn out that the party arrested has committed a felony, then they are justified. Here, however, the constable had a warrant, directing him to take the goods of *William Parton*. He went to the house where he really supposed those goods were to be found, and it occupied a jury a very considerable time to decide whether he was mistaken or not; he meant therefore to obey the warrant, and, as far as he was concerned, he was acting *bonâ fide* in obedience to it. It afterwards, however, turned out that the goods belonged to the plaintiff; and, therefore, he was not obeying the warrant of the justice so as to make the justice responsible. As I consider, however, that the 8th section was intended to give a benefit in addition to that given by the 6th section, it appears to me that this case falls within it. And I think, also, that the officer, as far as regards himself, and as far as regards the law which protected him, may be considered as having acted *bonâ fide* in obedience to the warrant which he had received. This action ought, therefore, to have been brought within the period of six months. And the rule for entering a nonsuit must be made absolute. The other judges concurring — R. A.

Some constables, under a warrant to search a house for black cloth which had been stolen, finding no black cloth, took cloth of other colours, and carried it before a magistrate, refusing, at the same time, to tell the owner of the house searched, whether they had any warrant or no: Held, that they were within the protection of stat. 24 G. 2. c. 44.; and that an action against them ought to have been commenced within six months after the grievance complained of.

Smith v. *Wiltshire and others, E.* 2 *G.* 4. 2 *Brod. & Bing.* 619. Trespass. At the trial before *Burrough* J., *Taunton Spring Ass.* 1821, it appeared that the defendants, who were constables, searched the plaintiff's house under a warrant for the discovery of some black kerseymere, which had been stolen. They found no black cloth, but they took cloth of other colours, which they carried before a magistrate. Upon being asked whether they had a warrant, they refused to give any answer. The action not having been brought *within six months* after the alleged trespass, it was contended that the defendants, as constables, were protected by stat. 24 *G.* 2. *c.* 44. § 8.; and the jury, under the direction of the learned judge, found a verdict for the defendants. It was moved that this verdict should be set aside and a new trial be granted, on the ground that, as the defendants were specifically authorized to take black cloth, in taking any cloth other than black, they were not acting as constables protected by the statute, but as mere unauthorized trespassers, so that the jury should have been directed to find for the plaintiff, and *Price* v. *Messenger* (2 *Bos. & Pull.* 158.) was cited as expressly in point; and it was contended, that unless the plaintiff was bound down by the case of *Parton* v. *Williams*, (*supra*); the cases of *Money* v. *Leach*, (3 *Burr.* 1766.); *Milton* v. *Green*, (5 *East*, 233.); *Bell* v. *Oakley*, (2 *M. & S.* 259.); *Postlethwaite* v. *Gibson*, (3 *Esp.* 226.) *ante*, p. 718. shewed that the protection of the statute only extended to cases where constables were acting in obedience to a warrant from a magistrate. The court having taken time to consider, *Dallas* C. J. (C. P.) now

24 G. 2. c. 44.

Smith v. Wiltshire and others.

delivered the judgment of the court.—This is an action of trespass for breaking and entering the plaintiff's house and seizing his goods; and also, in another count, for seizing his goods only, brought against constables and others acting in their aid. The defendants produced at the trial a warrant of a justice of peace, commanding them to search the plaintiff's house for certain cloth suspected to have been stolen, and to seize it: they, accordingly, searched and seized certain cloth not strictly falling within the description of the warrant. The action was not brought within six calendar months from the time of seizure. The question is, whether the defendants are entitled to the benefit of the stat. 24 *G.* 2. *c.* 44. § 8.? We are of opinion that they are. The case of *Parton* v. *Williams and others* is in point, where the defendants, having a warrant to seize the goods of *A.*, seized, by mistake, the goods of *B.*, and the court held the action ill brought after the lapse of six calendar months. All the judges then held, that the 8th § of 24 *G.* 2. was intended to give to constables some benefit not given by the 6th §; observing, that the 6th § protected them absolutely and at all times against any action for acts falling within that §, namely, *acts done in obedience to a warrant*, and that it was nugatory to limit to six months by the 8th §, actions which, by the 6th §, could not be brought at all. It is true, that, in *Parton* v. *Williams*, the case of *Price* v. *Messenger and another*, does not appear to have been cited, where the defendant, having a warrant to search for and seize stolen sugar, seized certain sugar which was not stolen, and also certain tea and nails; and where one of the judges is reported to have said, that, when the defendants seized the teas, they were not acting in obedience to the warrant. But that point did not there arise, for the defendants had suffered judgment by default as to the teas and nails, and the decision was, that the defendants did act in obedience to the warrant, within § 6., although the sugar seized turned out not to have been stolen: and no question whatever arose on § 8. The only case, therefore, that militates against *Parton* v. *Williams*, is the case which was there fully considered of *Postlethwaite* v. *Gibson*. That, however, was only the opinion of one very learned judge at N. P., and is the less to be regarded, because the plaintiff there ultimately submitted to be nonsuited, so that the opinion could not afterwards be questioned. That case, therefore, was properly disregarded in *Parton* v. *Williams*. In *Parton* v. *Williams*, the court did not expressly decide that the 8th § applies to all cases of constables acting as such, but we think that their reasoning extends to such construction, and that such is the true construction. The words *as aforesaid*, there refer either to the words immediately preceding, namely, *for any thing done in the execution of his office*, to which extent parties are protected by § 8., and it would be strange if constables were not equally protected; or else they are explanatory only of the word "person," and § 8., by the words "or person acting as aforesaid," means any person not an officer, who acts by order and in aid of an officer. *Godin* v. *Ferris*, (2 *H. Blac.* 14.) in trespass, and *Saunders* v. *Saunders*, (2 *East*, 254.) in trover, shew, that when a statute limits the time of bringing any action against an officer to a certain time from the time of the act by him done, the time must be computed from the original seizure of the goods.

But a constable who commits a person in charge is not liable to an action for false imprisonment, though the charge be ill-founded, unless he make himself a party in oppressing the person committed, knowing the charge to be so; for if a regular charge be made before him, he is warranted by law in committing the party charged. *White* v. *Taylor & Simcoe*, 4 *Esp. R.* 80.

But a constable is justified in committing on a charge made.

If the constable be assaulted in the execution of his office, he need not go back to the wall, as private persons ought to do; and if in the striving together, the constable kill the assailant, it is no felony: but if the constable be killed, it shall be construed premeditated murder. *Hale's Sum.* 36, 37. 1 *Hale*, 457.

Constable assaulted need not go back to the wall.

By stat. 1 & 2 *G.* 4. *c.* 88. § 2. It is enacted that "if any person shall assault, beat, or wound any constable, officer, headborough, or other person whomsoever, with intent in so doing, or by means thereof, to obstruct, resist, or prevent the lawful apprehension or detainer of any person charged with or suspected of felony; or if any person charged with or suspected of felony, shall assault, beat, or wound, any constable, officer, headborough, or other person whomsoever, with intent in so doing, or by means thereof, to obstruct, resist, or prevent his or her apprehension or detainer; then and in every or any such case, if the person or persons so offending shall be convicted of a misdemeanor only, it shall be lawful for the court by or before whom any such person or persons shall be so convicted as aforesaid, to order and direct, in case it shall think fit, that such person or persons shall, in addition to any other pains, penalties, or punishment to which he, she, or they are now subject or liable, be kept to hard labour for any term not exceeding two years, and not less than six months." *Et vide* stat. 3 *G.* 4. *c.* 114. *tit.* "Judgment." Vol. III. p. 95. and *tit.* Rescue, Vol. V.

1 & 2 G. 4. c. 88. Punishment of persons assaulting constables to prevent the apprehension or detainer of persons charged with felony.

VII. Concerning the Expences of his Office.

By stat. 27 *G.* 2. *c.* 20. § 2. The constable executing a justice's warrant, for levying a penalty or other sum of money directed by an act of parliament, by distress, may deduct his own reasonable charges of taking, keeping, and selling the goods distrained; returning the overplus on demand, after such penalty or sum of money and charges deducted.

27 G. 2. c. 20. Charges of making distress

By stat. 3 *J.* 1. *c.* 10. § 1. A person committed to gaol for any misdemeanor shall bear his own charges (if able) for conveying or sending him to the said gaol, and the charges of those that guard him thither; and if he shall refuse at the time of commitment to defray the same, or shall not then pay the same, the justice committing him shall, by warrant to the high or petty constable where the person shall inhabit, or from whence he shall be committed, or where he shall have any goods within the county, order so much to be sold thereof as, by his discretion, shall satisfy the same; the appraisement to be made by four honest inhabitants.

3 J. 1. c. 10. (a) Charges of conveying an offender to gaol.

And by stat. 27 *G.* 2. *c.* 3. § 1–4. If he have not money nor goods within the county sufficient to bear the charges of himself and of those who convey him to the gaol or house of correction, the constable may make application to a justice, who may upon oath

27 G. 2. c. 3. (a)

(*a*) See these statutes more at large, title Commitment, *ante*, p. 680.

examine into and ascertain the reasonable expenses, and shall by his warrant (without fee) order the treasurer to pay the same; except n *Middlesex*, where the same shall be paid by the overseers of the parish where the person was apprehended.

41 G. 3. U. K. c. 78. When special constables shall be appointed in *England* to execute warrants in cases of felony, two justices may order proper allowances to be made for their expences and loss of time, which order shall be submitted to quarter sessions;

And by stat. 41 *G.* 3. U. K. *c.* 78. § 1. It is enacted, that "it shall and may be lawful to and for any two justices of the peace for any county, city, division, riding, or place within that part of the U. K. called *England*, when any person or persons shall have been nominated or appointed a special constable or special constables, for the purpose of executing any warrant or warrants in any case or cases *of felony*, to order, by any writing or writings under their hands, such proper allowances, to be made to such special constable or special constables, for his or their expenses, trouble, and loss of time in executing, or endeavouring to execute, such warrant or warrants, as to him or them shall seem reasonable and necessary; which orders shall be afterwards laid before and submitted, on the oath of such special constable or constables, to the consideration of the justices assembled at the next general quarter sessions of the peace to be holden for such county, city, division, riding or place, as the case may be: and the justices so assembled at such general quarter sessions, may allow or disallow the whole or any part or parts of such allowances so ordered by such justices issuing such warrant or warrants, and shall and may thereupon then order and direct the treasurer for such county, city, division, riding, or place, to pay such sum or sums of money to such special constable or special constables, as to the said justices so assembled shall seem reasonable and necessary: and such treasurer shall, and he is hereby authorised and required forthwith to pay the sum and sums of money so ordered and directed to be paid to the person or persons empowered to receive the same; and such treasurer shall be allowed the same in his accounts."

and to high constables.

§ 2. The two justices may in like manner order an allowance to be made to any high constable for extraordinary expenses incurred in the execution of their duty in cases of tumult, riot, or felony: such order to be submitted to the next sessions in manner as aforesaid, who may allow, &c. in like manner.

1 G. 4. c. 37.

Stat. 1 *G.* 4. *c.* 37., intituled "*An act to increase the power of magistrates in the appointment of special constables:*" after reciting that *whereas doubts have arisen, whether any person or persons can be compelled to act as special constables, except in any actual tumult, riot or felony:* and *whereas it is expedient that justices of the peace should have the power of compelling certain persons to act as special constables, not only in case of actual tumult, riot, ar felony, but also on the reasonable apprehension thereof, for the prevention of the same:* enacts and declares, that after the passing of this act, [8th *July* 1820] in all cases where it shall be made to appear to any two or more justices of the peace, acting for any county, city, division, riding, or place, by the information on oath of five respectable householders of such county, city, division, riding, or place, that any tumult, riot, or felony has taken place, or is likely to take place, and may reasonably be apprehended, such justices may and are hereby authorised to call upon, nominate, and appoint, by precept in writing under their hands, any house-

Cases in which magistrates are empowered to appoint special constables;

holders or other persons (not legally exempt from serving the office of constable) residing within their respective divisions, or the neighbourhood thereof, to act as special constables for such time and in such manner as to the said justices shall seem fit and necessary for the preservation of the public peace, and for the prevention or suppression of any tumult, riot, or felony; and the said justices are hereby empowered to administer to such person so appointed the usual oaths administered by law to all special constables.

who are compellable to act, under the same penalties for refusal as constables.

§ 2. Enacts, that in case any person (not legally exempted as aforesaid) so called upon, nominated, and appointed by such justices as aforesaid, *shall neglect or refuse to take upon themselves the office, and to act as such special constable, such person so neglecting or refusing shall be liable to such and the same fines, penalties, and punishments, as persons refusing to take upon themselves the office of constable are now by law subject to.*

Justices at sessions to give allowance to said special constables.

§ 3. *Enacts, that it shall and may be lawful for the justices of the peace, assembled at the general or quarter sessions holden for any county, city, division, riding, or place, where special constables shall have been called out as aforesaid, to order and direct such reasonable allowances for trouble and expences, to be made to any person or persons so called out by authority of this act, as to the said justices shall seem fit, which allowance the said justices may order the treasurer of such county, city, division, riding, or place, to pay to such persons as the said justices shall direct; and such treasurer shall, and he is hereby authorised and required, forthwith to pay the sum or sums of money so ordered and directed to be paid, to the person empowered to receive the same, and such treasurer shall be allowed the same in his accounts.*

Court may allow costs.

§ 4. *Enacts, that the court before which any indictments may be tried under the provisions of this act shall have the power to award reasonable costs of trial to such persons as may prefer the said indictments, and may order the treasurer of such county, city, division, riding, or place, wherein such indictment shall be tried, to pay the sum or sums of money so ordered, to such persons as the said court shall direct; and such treasurer shall and he is hereby authorised and required forthwith to pay the sum or sums of money, so ordered and directed to be paid, to the persons empowered to receive the same; and such treasurer shall be allowed the same in his accounts.*

Public act.

§ 5. Enacts, that this act shall be deemed a public act.

18 G. 3. c. 19. Charges in the business of the parish.

And by stat. 18 *G.* 3. c. 19. § 4. Whereas constables, headboroughs, and tithingmen, are or may be at great charge in "doing the business of their parish, township, or place, and in many cases are not sufficiently indemnified by the laws," it is therefore enacted, "that every constable, headborough, or tithingman, *shall every three months*, and *within fourteen days after he shall go out of such office*, deliver to the overseers of the poor of the said parish, township or place, for the time being, a just account in writing, fairly entered in a book to be kept for that purpose, and signed by him, of all sums so by him expended on account of the said parish, township, or place, in all cases not hitherto provided for by the laws heretofore made, or by this act; and also of all sums received by him on the account of the said parish, township, or place; and the said overseers of the poor, or

To deliver accounts to overseers every three months of receipts and expenditures, and also within 14 days after he shall go out of office.

Such accounts to be laid before

18 G.3. c.19.

a vestry within the next 14 days. If approved of, to pay the same out of the poor rates.

their successors, shall, within the next fourteen days after the said account or accounts shall be so delivered, lay the same before the inhabitants of the said parish, township, or place; and in case the said account or accounts be approved of by the majority of such inhabitants, the overseers of the poor of the said parish, township or place, for the time being, are hereby authorised and required to pay out of the poor-rates made or to be made for such parish, township or place, such sum or sums of money as shall appear to be due on the said account or accounts; but in case the said account or accounts, or any parts thereof, shall be disallowed, then the said overseers of the poor for the time being shall then deliver back to the said constable, headborough, or tithingman, such book of accounts; and it shall and may be lawful to and for the said constable, headborough, or tithingman then to produce the said book before any one or more of H. M.'s justices of the peace in and for the county, riding, division, city, town corporate, franchise or liberty, wherein such parish or township shall be situate, giving reasonable notice thereof to the overseers of the poor of the said parish, township or place, for the time being; which said justice or justices is and are hereby authorised to examine the same, and to hear and determine any objection or objections that shall be made to the said accounts, and to settle the sum which to him or them shall appear due on the said account, and to enter the same in the said account, and to sign his or their name or names thereto; and the overseers of the poor of the said parish, township, or place for the time being, are hereby authorised and required to pay the said sum, out of the money which shall come to their hands by virtue of any rate or assessment made or to be made for the relief of the poor."

If any such account shall be disallowed, a justice may settle the same.

And the overseers to pay the balance.

Appeal to the quarter sessions

§ 5. "Provided, that in case the overseer or overseers of the poor of the said parish, township, or place, for the time being, shall find that the said parish, township, or place, is aggrieved by any neglect, act or thing done or omitted by the said constable, headborough, or tithingman, or by any of H. M.'s justices of the peace, or shall have any material objection to such account, or any part thereof, or to such determination as aforesaid, it shall and may be lawful for such overseer or overseers, in any of the cases aforesaid, giving reasonable notice to the said justice, constable, headborough, or tithingman, to appeal to the next general or quarter sessions of the peace for the county, riding, division, city, town corporate, franchise or liberty, where such parish, township, or place lies; and the justices of the peace there assembled are hereby authorised and required to receive such appeal, and to hear and finally determine the same; but if it shall appear to the said justices, that reasonable notice was not given, then they shall adjourn the said appeal to the next quarter sessions, and then and there finally hear and determine the same; and the said justices may award and order to the party for whom such appeal shall be determined reasonable costs, in the same manner that they are empowered to do in case of appeals concerning the settlement of poor persons," by an act made in the 8th and 9th years of *W.* 3. *c.* 30. Provided, § 6. That in corporations which have not four justices, the overseer may appeal, if he think fit, to the sessions of the county. See *R.* v. *Just. of Lancashire, post,* p. 727.

§ 9. And the justices in sessions may from time to time lay down or alter such rules and regulations as to any costs or charges to be allowed to any person by virtue of this act, as to them shall seem just; which rules and regulations, having received the approbation and signature of one or more of the judges of assize, shall be binding, and not otherwise, on all persons whatsoever.

18 G. 3. c 19. Sessions may make regulations.

R. v. *Bird and others, E.* 59 *G.* 3. 2 *B.* & *A.* 522. A question arose whether the expenses of a constable, in prosecuting an assault committed on him in the execution of his duty, could be paid by the overseer out of the poor's rate, under stat. 18 *G.* 3. *c.* 19. § 4. After argument, the court of K. B. said, that the expenses of the constable, which were to be allowed him by the parish, were those necessarily incurred by him on behalf of his parish, which these were not.

Constable's expenses.

R. v. *Seville and others, M.* 2 *G.* 4. 5 *B.* & *A.* 180. This was an appeal by the defendants, who were overseers of the poor of the township of *Quick*, in the W. R. of *Yorkshire*, against the accounts of *John Robinson*, late constable of that township. At the trial it appeared, that on a *Sunday* in the month of *December*, 1819, a person of the name of *William Whitehead*, being in a state of intoxication, met a young woman on the road, and on his attempting to take liberties with her, she made her escape from him, and took refuge in the chapel, where divine service was just beginning; he followed her and behaved in an unbecoming and rude manner. In consequence of which he was taken into custody by the constable, (who was then in the chapel,) and the chapel-warden, and was the next day by them taken before a magistrate; and they were both bound by recognizance to prosecute him at the next *Wakefield* sessions for a misdemeanor, which they accordingly did; and he was found guilty, and punished by six months' imprisonment. No notice was ever given to the overseers or other inhabitants, that the prosecution was intended to be carried on at the expense of the township, nor was it mentioned or approved of, at any meeting of the inhabitants. The sessions at *Wakefield*, where the indictment against *Whitehead* was tried, were held in the month of *January*, 1820, and in the *March* following, the constable regularly, and in the way pointed out by the act 18 *G.* 3. *c.* 19., presented his accounts of the expenses incurred by him in the discharge of his office as constable; the whole of which were allowed, except the item of 18*l.* for the expenses incurred in the prosecution of *Whitehead*, the allowance of which was negatived by a large majority of the meeting of the inhabitants, held for the purpose of investigating them, upon the ground that it was not a charge which, by law, the constable could make upon the township. In consequence of this refusal, the constable duly applied to a justice of the peace, for a summons for the overseers of the poor to shew cause, why they should not pay this sum; and, upon the overseers appearing, the magistrate made an order, allowing the above sum of 18*l.*, against which order the overseers appealed. Upon hearing the appeal, the sessions confirmed the order.—After argument in support of the order of sessions, per *Abbott* C. J. The difficulty in this case is to shew that it was the business of the township to prosecute the individual who in this case committed the offence; for unless it be clearly made out to be *the business of the township*, it is im-

A constable apprehended an offender for a *misdemeanor*, committed in his presence in a place of religious worship, and carried him before a magistrate, and was bound over by recognizance to prosecute him for the offence; Held, that the expenses of such a prosecution were no monies expended by him in doing the business of his township, and that he could not charge them in his accounts under 18 G. 3., c. 19. § 4.

18 G. 3. c. 19. Rex v. Seville.

possible that the sums expended by the constable in this case can be said to be a charge in doing the business of the parish, township, or place, so as to bring it within the act of parliament. Now I am aware of no law which says that it is the business of a parish or township to enter into such prosecutions; and I am therefore of opinion, that these expenses ought not to have been allowed by the sessions.—*Bayley* J. The constable in this case acted perfectly right in taking the offender before the magistrate, but he should have done no more. He, however, together with the chapel-warden, enters into a recognizance to prosecute, having no authority to do so. Now, before he did this, he should have considered whether he was willing to enter into such a recognizance at his own expense; and if not, he should have endeavoured to have obtained some authority from the township, in which case it would have been different; but not having done so, I think he cannot charge these sums in his account, as monies expended on account of the township. *Very mischievous consequences might arise, if the act of a constable could thus subject the township to heavy law expenses.*—*Holroyd* J. The constable is entitled to charge, in his accounts, the monies expended by him in his office, on account of the township. In this case, his duty was completely at an end when he had carried the offender before a magistrate; and to prosecute, and to be bound over by recognizance to do so, was no part of his duty. In this respect, however, he chose to submit to the authority of the magistrate, and permitted himself to be bound over. But that act is not binding on the township. I am clearly of opinion, that these charges do not fall within the act of parliament, and that the sessions did wrong in allowing them.—Order of sessions quashed.

The 18 G. 3. c. 19. § 5. gives an appeal only in case the majority of the overseers concur in it.

R. v. *The Justices of Lancashire*, *E.* 3 *G.* 4. 5 *B.* & *A.* 755. *J. Williams* had obtained a rule *nisi* for a mandamus to the defendants, to enter continuances, and hear the appeal of *Samuel Stansfield*, one of the overseers of the township of *Ashton-under-Lyne*, in the county of *Lancaster*, against the allowance of the sum of 24*l*., in the constable's accounts for that township. It appeared from the affidavits, that the constable, pursuant to the 18 G. 3. *c.* 19. § 4., had laid his accounts before a vestry meeting, on the 26th *October* last, when the item in question, being the amount of the expenses of a prosecution for a misdemeanor against Mr. *Samuel Waller*, a dissenting minister, for preaching in the streets, was disallowed by the vestry. He then, pursuant to the act, laid the accounts, on the 1st *November* last, before two justices of the peace for the county, by whom the disputed item was allowed. Against this allowance *Stansfield*, one of the overseers of the township, appealed. At the sessions, the remaining overseers, being seven in number, appeared, and being sworn, stated, in open court, their dissent from the appeal; and on this ground the sessions dismissed it, being of opinion, that unless the majority, at least, of the overseers concurred in it, the fifth section of the act gave no appeal.—After argument, *Abbott* C. J. It is much to be lamented, that, in the different sections of this act of parliament, we should find a variety in the expressions used. But, looking at the whole, it seems to me that the words "the "overseer or overseers," used in the 5th section, are to be construed in the same manner as the words "the overseers," used in the

4th; and that, by both, the collective body of the parish officers must be meant. I think, therefore, that the legislature did not intend thereby to give an appeal to *any one* of that body. It is urged, that by this construction the parish may sustain great injury; and undoubtedly, it may happen that there may be no appeal, and that too, contrary to the wishes of the majority of the persons rated. But this act of parliament seems to me to have intended to leave the appeal entirely to the discretion of the parish officers. In case the appeal be unsuccessful, costs are given; and, therefore, if we were to allow *one* of the overseers to appeal, and the sessions awarded costs against him, he might possibly charge them to the parish rate. In *R.* v. *Pascoe,* 2 *M. & S.* 345. Vol. IV. p. 264. this consequence could not have followed. I am, therefore, of opinion, that there can be no appeal, unless the majority of the parish officers concur in it, and that the sessions have done right in this case.—*Bayley* J. The mischief suggested in argument could not be altogether remedied, unless an appeal had been given to the persons rated, which clearly is not the case. The clause gives a power of appeal to the overseer or overseers, if they find that the parish is aggrieved. Now, that implies that they are to exercise a judgment, which must be done by the majority.—*Holroyd* J. I think that, in this case, the right of appeal is given to the body of the parish officers, and that the majority of them are alone competent to exercise it, on the principle that, in the exercise of a public or general power, the majority are to act for the whole. Here, the appeal is only given where a grievance is found by them to exist. Now, if the majority, upon consideration, determine that there is no such grievance, it seems to me that the one in the minority ought not to be allowed to appeal, on the suggestion that he alone finds that a grievance exists. I think, therefore, that this rule should be discharged. *Best* J. concurred.—R. D.

18 G. 3. c. 19.

VIII. Concerning his Account and Removal from his Office.

By stats. 12 *G.* 2. *c.* 29. § 8. 55 *G.* 3. *c.* 51. § 12. The high constables shall at the general or quarter sessions, if thereunto required, account for the general county rate by them received; on pain of being committed to gaol until they shall account; and shall pay over the money in their hands, according to the order of the said court, on the like pain. And all their accounts and vouchers shall, after having been passed at the said sessions, be deposited with the clerk of the peace, to be kept amongst the records, and inspected by any justice without fee.

12 G. 2. c. 29. 55 G. 3. c. 51. High constables to account at the sessions.

And in such manner as constables are to be chosen, in the same manner, and by the like authority, are they to be removed; so as if there shall be cause to remove and put an high constable from his place, it hath not been thought fit that any one or two justices should do it upon their discretion, but that it should be done by the greater part of the justices of that division, and that for some just cause; or else that it be done at the sessions. *Dalt.* c. 28. p. 63.

Removal.

And it seems clear that the sheriff or steward of the leet, having power to place a constable in his office, have by consequence a power of removing him. 2 *Haw.* *c.* 10. § 38.

And the justices of the peace have also used, for good cause, to displace all such constables as have been chosen and sworn by them. 2 *Haw.* *c.* 10. § 38.

13 & 14 C. 2. c. 12. Constable continuing above a year.

By stat. 13 & 14 *C.* 2. *c.* 12. § 15. If a constable shall continue above a year in his office, the sessions may discharge him, and put another in his place, till the lord shall hold a leet.

And if the court, or other judge, shall refuse to discharge a constable, the K. B. may compel them by *mandamus.* 2 *Haw.* *c.* 10. § 47.

A. Indictment for not taking the Office.

County of ——— to wit. } *THE jurors for our lord the king upon their oath present, that* A. O. *late of* ———, *in the township of* ——— *in the said county, yeoman, on the* ——— *day of* ——— *the* ——— *year of the reign of* ——— *and long before, and always after until the day of the preferring of this indictment, was and still is an inhabitant and residing within the township of* ——— *aforesaid, in the county aforesaid, and a fit and able person to serve the office of constable for the said township; and he the said* A. O., *on the said* ——— *day of* ———, *in the year aforesaid, in the township aforesaid, at the court leet of* A. L., *lord of the manor of* ——— *aforesaid, holden, before* A. S., *gentleman, steward of the said court, was elected and chosen, according to the ancient custom of chusing constables for the said township, for one year from thence next following, to do and execute all and singular those things which belong to the office of constable;* [or otherwise as the custom shall be for chusing constables;] *And that the said* A. O. *afterwards, to wit, on the* ——— *day of* ——— *in the year aforesaid, at the township of* ——— *aforesaid, had due notice given to him by* A. B., *bailiff of the aforesaid manor, of his being so elected and chosen constable as aforesaid, and then and there was by him the said* A. B., *required to appear before* J. P. *esquire, then and yet one of his majesty's justices assigned to keep the peace within the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, on the said* ——— *day of* ——— *in the year aforesaid, to take his oath for the due execution of the said office of constable for the same township, according to the duty of that office; nevertheless the said* A. O., *not regarding his duty in that behalf, but contriving and intending wholly to neglect to serve the said office of constable, after he the said* A. O. *was so elected and chosen into the said office as aforesaid, to wit, on the said* ——— *day of* ——— *in the year aforesaid, and continually afterwards until the day of taking this inquisition, at the township aforesaid, in the county aforesaid, unlawfully and contemptuously did refuse, and still doth refuse, to take his said oath for the due executing the said office of constable, and in any wise to execute the same office, to the great hindrance of justice, in contempt of our said lord the king, and to the evil example of all others in the like case offending, and against the peace of our said lord the king.*

B. Constable's Oath.

YOU shall well and truly serve our sovereign lord the king, [*and the lord of this leet,* if sworn in a court leet,] *in the office of constable for the township of* ——— *for the year ensuing, or until another be sworn in your stead, according to the best of your skill and knowledge: So help you God.*

Contempt. See Attachment.

Conviction.

[3 G. 4. c. 23.]

THE power of a justice of the peace to convict an offender in a summary way without a trial by jury is in restraint of the common law, and in abundance of instances a tacit repeal of that famous clause in the Great Charter, that a man shall be tried by his equals; which also was the common law of the land, long before the great charter, even from time immemorial, beyond the date of histories and records. Therefore generally nothing shall be presumed in favour of this branch of the office of a justice of he peace; but the intendment will be against it. For which reason where this special power is given to a justice of the peace by act of parliament, it must appear that he hath strictly pursued it; otherwise the common law will break in upon him, and level all his proceedings. So that where a trial by jury is dispensed withal, yet he must proceed nevertheless according to the course of the common law in trials by juries, and consider himself only as constituted in the place both of judge and jury. Therefore there must be an information or charge against a person; then he must be summoned or have notice of such charge, and have an opportunity to make his defence; and the evidence against him must be such as the common law approves of, unless the statute specially directeth otherwise; then if the person is found guilty, there must be a conviction, judgment, and execution, all according to the course of the common law, directed and influenced by the special authority given by statute; and in the conclusion, there must be a *record* of the whole proceedings, wherein the justice must set forth the particular manner and circumstances, so as if he shall be called to account for the same by a superior court, it may appear that he hath conformed to the law, and not exceeded the bounds prescribed to his jurisdiction.

The difficulty of drawing up a conviction in due form has at length been in a great measure removed by stat. 3 *G.* 4. *c.* 23. intituled "*An act to facilitate summary proceedings before justices of the peace and others.*"

3 G. 4. c. 23.

By this statute, (passed 15th *May*, 1822,) after reciting, that whereas great inconveniences often arise in summary proceedings before justices of the peace, deputy lieutenants, and others, from the want of a general form of conviction: it is enacted, that

3 G.4. c.25.
General form of conviction, where no particular form provided.

"In all cases wherein a conviction shall have taken place, and no particular form for the record thereof hath been directed, the justice or justices, deputy lieutenant, or deputy lieutenants, or other person or persons duly authorised to proceed summarily therein, and before whom the offender or offenders shall have been convicted, shall and may cause the record of such conviction to be drawn up in the manner and form following, or in any words to the same effect, *mutatis mutandis;* (that is to say) —

County [*or, as the case may be,*] of ———. } *BE it remembered, that on the* ——— *day of* ———, *in the year of our Lord* ———, *at* ———, *in the county of* ———, A. B. *of* ———, *in the county of* ———, *labourer,* [or, as the case may be,] *personally came before me,* [or, *before us, &c.*] C. D. *one* [or *more,* as the case may be,] *of his majesty's justices of the peace for the said* ———, *and informed me,* [or *us, &c.*] *that* E. F. *of* ———, *in the county of* ———, *on the* ——— *day of* ———, *at* ——— *in the said* ———, *did* [here set forth the fact for which the information is laid] *contrary to the form of the statute in such case made and provided, whereupon the said* E. F. *after being duly summoned to answer the said charge, appeared before me,* [or *us, &c.*] *on the* ——— *day of* ———, *at* ——— *in the said* ———, *and having heard the charge contained in the said information, declared he was not guilty of the said offence,* [or, as the case may happen to be,] *did not appear before me,* [or, *us, &c.*] *pursuant to the said summons,* [or, *did neglect and refuse to make any defence against the said charge*]; *whereupon I* [or *we, &c.* or *nevertheless I,* or *we, &c.*] *the said justice,* or *justices, did proceed to examine into the truth of the charge contained in the said information, and on the* ——— *day of* ——— *aforesaid, at the parish of* ——— *aforesaid, one credible witness, to wit,* A. W. *of* ———, *in the county of* ———, *upon his oath deposeth and saith,* [if E. F. be present say, *in the presence of the said* E. F.] *that within* ——— *months* [or, as the case may be,] *next before the said information was made before me* [or *us, &c.*] *the said justice, by the said* A. B., *to wit, on the* ——— *day of* ———, *in the year* ———, *the said* E. F. *at* ———, *in the said county of* ———, [here state the evidence, and as nearly as possible in the words used by the witness, and if more than one witness be examined, state the evidence given by each,] [or, if the defendant confess, instead of stating the evidence, say, *and the said* E. F. *acknowledged and voluntarily confessed the same to be true*]; *therefore it manifestly appearing to me* [or *us, &c.*] *that he the said* E. F. *is guilty of the offence charged upon him in the said information, I* [or *we, &c.*] *do hereby convict him of the offence aforesaid, and do declare and adjudge, that he the said* E. F. *hath forfeited the sum of* ——— *of lawful money of* Great Britain, *for the offence aforesaid, to be distributed* [or *paid,* as the case may be,] *according to the form of the statute in that case made and provided. Given under my hand* [or, *our hands, &c.*] *and seal, the* ——— *day of* ———, *in the year of our Lord* ———.

One justice, &c. may receive

§ 2. Enacts, "that in all cases where two or more justices, deputy lieutenants or others, are authorised and required to hear

and determine any complaint, one justice, deputy lieutenant, or such other person shall be competent to receive the original information or complaint, and to issue the summons or warrant requiring the parties to appear before two or more justices of the peace, deputy lieutenants or others, as the case may require; and after examination upon oath into the merits of the said complaint, and the adjudication thereupon, by any such two justices, deputy lieutenants, or other persons, being made, all and every the subsequent proceedings to enforce obedience thereto or otherwise, whether respecting the penalty, fine, imprisonment, costs, or other matter or thing now enacted, or to be hereafter enacted, may be enforced by either of the said justices, deputy lieutenants, or other persons, or any other justice of the peace or deputy lieutenant for the same county, riding, or place, in such and the like manner as if done by the same two justices, deputy lieutenants, or other persons, who so heard and adjudged the said complaint; and where the original complaint or information shall be made to any justice or justices of the peace, deputy lieutenant or deputy lieutenants, or other person or persons different from him or them before whom the same shall be heard and determined, the form of conviction shall be made conformable and according to the fact."

3 G.4. c.23.

original information, &c. where two or more justices, &c. are empowered to hear and determine.

§ 3. Enacts, "that in all cases where it appears by the conviction that the defendant has appeared and pleaded, and the merits have been tried, and that the defendant has not appealed against the said conviction where an appeal is allowed, or if appealed against, the conviction has been affirmed, such conviction shall not afterwards be set aside or vacated in consequence of any defect of form whatever, but the construction shall be such a fair and liberal construction as will be agreeable to the justice of the case."

Where the merits have been tried, convictions not to be set aside for defect of form.

§ 4. Enacts, "that nothing herein contained shall extend, or be construed to extend, to that part of the U. K. called *Scotland*."

This act not to extend to *Scotland*.

Be it remembered.] A conviction is, "a record of the summary proceedings upon any penal statute, before one or more justices of the peace, or other persons duly authorised, in a case where the offender has been convicted and sentenced." *Bosc.* 7.

Conviction, what.

On the ——— day of ———.] The day and year of exhibiting the information must be specified, as well that it may appear to be subsequent to the offence, and prior to all other proceedings, as in order to ascertain that the prosecution is within the time limited by statute. 2 *Ld. Raym.* 1546. *Paley*, 58.

Day of the information must appear.

A. B. *of, &c. &c.*] The name of the informer should be set forth, that it may afterwards appear that the witness is not the same person; since most of the statutes give a part of the penalty to the informer, and in such cases the informer cannot be a witness. *R.* v. *Thomas Stone*, 2 *Ld. Raym.* 1545.

And name of the informer.

One [or more, &c.] *of his majesty's justices of the peace for the said ———.*] Summary convictions before magistrates being by virtue of a circumscribed and extraordinary power, the name and style of the justice or justices, before whom the information is lodged, must be set forth in the statement of the *information*, from which it must appear that he or they had authority to take such an information. 2 *Salk.* 471. 1 *Str.* 261. *Paley*, 58.

Justice's authority to be shewn.

On his corporal oath.] Where the statute directs the complaint to be upon oath (*a*), it should be so stated. *R.* v. *Willis*, *Bosc.* 16. *Paley*, 15. 60.

Some acts also require the complaint to be in in *writing;* and where that is the case, it must be so expressed, but unless so directed, it does not seem necessary that it should be so. Nor, is it requisite that the information be upon oath, if not enjoined by the letter of the statute. *Paley*, 15. 60.

To be on a complaint precedent.

And informed me [or *us, &c.*] A conviction ought to be upon an information or complaint precedent; and no information can be supported but by evidence of previous facts. *R.* v. *Fuller*, 1 *Ld. Raym.* 510. In *R.* v. *Kent*, 2 *Ld. Raym.* 1546., the conviction was quashed, because the information was set out to be exhibited on 2d *Nov.* 1 *G.* 2. and the conviction was laid to be on 2d *Oct.* 1 *G.* 2. See (*post,*) *R.* v. *Picton*.

Feme covert may be convicted.

That E. F. *of* ———, *in the county of* ———.] It is no objection that the defendant appears to be a *feme covert*, for a *feme covert* may be convicted on a penal statute, without joining her husband. This point was so decided in the case of a conviction on stat. 9 *G.* 2. *c.* 23. for selling gin, to which exception was taken, that the defendant appeared to be a *feme covert*, and therefore could make no contract for the sale; or that if she could be convicted of the offence, that the husband ought to have been joined for uniformity. But it was held that the conviction was right, for it was an offence which the woman might commit alone. *R.* v. *Crofts*, 2 *Str.* 1120. *Vide Foster's Case*, 11 *Rep.* 61. *Paley*, 60.

The time of committing the offence to be stated.

On the ——— *day of* ———.] The time of committing the offence must be stated, that it may appear that the prosecution is commenced in due time, *Salk.* 369., and also, that the party may be enabled to defend himself against a second charge. *R.* v. *Katherall*, 2 *Str.* 900. But *note;* the offence need not be proved precisely on the day on which it is laid to have been committed, though it must be proved to have been committed within the time limited for the prosecution. And, for this reason, it has been held sufficient to *state* that between such and such a time the defendant killed so many deer, without shewing the particular days upon which they were killed. *R.* v. *Chandler*, *Salk*, 378. *Carth.* 501. 5 *Mod.* 446. 1 *Ld. Raym.* 582. and *Q.* v. *Simpson*, 10 *Mod.* 248. *Paley*, 61.

The time of committing the offence must also be stated in that part of the conviction in which the evidence is set forth. *Paley*, 132. For if that be not shewn either by positive proof of the day, or by express reference in the evidence to a date previously mentioned, the conviction cannot be supported; as is exemplified in this case: — A conviction on the malt act, 42 *G.* 3. *c.* 38. § 30. stated an information to have been exhibited *on the 29th of May*, 1805, charging "that the defendant within three months now last past, did wet certain corn, &c." The evidence stated was, that the witness on the *22d of May* (without mentioning the year) found a floor of malt then in the operation &c. (so proceeding to state the

(*a*) This is most usually directed where power is given to apprehend the offender in the first instance, though not confined to cases of that description. *Paley*, 15. *n.* (*e.*)

fact of the offence.) The conviction was quashed on account of the defective manner in which the date was alleged in the evidence. Ld. *Ellenborough* C. J. The evidence ought to appear to support the information, and the justices should either have stated the evidence of the witness to be that the offence was committed on the 22d *May*, 1805, if they really so understood the witness to mean; or if they had any doubt of that, they should have inquired of him more particularly as to the date of the fact. But here the date of the year neither appears expressly by the evidence, nor by any words of reference to any other date which is certain. And if they have done their business slovenly, we cannot supply their omission. As it stands on the conviction, the offence does not appear to have been committed within three months before the prosecution commenced, which is necessary to give them cognizance. *R.* v. *Woodcock*, 7 *East*, 146.

It is sufficient, however, to refer to a date already mentioned and ascertained. Thus where a conviction was dated the 4*th of June*, and the information exhibited the 29*th of May*, charged the offence within three months now last past, *viz. on the* 12*th of May now last past*, it was held sufficient that in the evidence, the fact was sworn to have happened on the *said* 12*th of May*. *R.* v. *Crisp*, 7 *East*, 389.

And the place where committed.

At ——— in the said ———.] The information must specify the place where the offence was committed, that it may appear to have been committed within the jurisdiction of the justice. A conviction before the lord mayor of *London*, on stat. 16 & 17 *Car.* 2. *c.* 2. for selling coals short of measure was quashed, because it was not proved that the coals were sold in *London*, or the liberties thereof, without which the lord mayor had no jurisdiction. *Reg.* v. *Highmore*, 2 *Ld. Raym.* 1220.

In *R.* v. *Edwards*, 1 *East*, 278. a conviction on stat. 5 *G.* 3. *c.* 14. for fishing without consent of the owner, "in part of a certain stream which runneth between *B.* in the parish of *K.* in the county of *W.* and *C.* in the same parish and county," was quashed because it did not appear that the intermediate course of the stream between the two *termini* in which the offence was alleged to be committed was in the county of *W.*, and within the jurisdiction of the committing magistrate. For in *R.* v. *Inhab. of Stepney*, *Burr.* S. C. 23., it was held that those who act under a jurisdiction given by act of parliament must shew their jurisdiction.

Stat. 12 *C.* 2. *c.* 24. § 45. giving summary jurisdiction in offences against the excise, to two or more justices of peace residing *near* to the place where such offence shall be committed, must be understood to be confined to justices of the *county* wherein the offence was committed. Therefore where a defendant was convicted by two resident justices on stat. 19 *G.* 3. *c.* 50. § 2. for having in his custody and possession a private and concealed still for illicit distillation; and the evidence only shewed that his *house* was in the county and that the still was found concealed in the *garden* of the said house, such *garden* not appearing to be in the same county, the conviction was held bad. *R.* v. *Chandler*, 14 *East*. 267.

So also in a conviction for illegally insuring lottery tickets against stat. 22 *G.* 3. *c.* 47., the information laid the offence in *Great Queen Street*, in the parish of *St. Giles*, &c. The evidence was as

follows: *T. J.* deposeth, "That on the 10th of *March* last, he insured personally (not stating where) with the said *Jefferies* the defendant, No. 18,433, and paid 2*s*. 9*d*. to receive one guinea if drawn blank or prize on the 30th day of drawing." It was objected, that the evidence did not prove the offence to be committed in the place laid in the information, which it ought to have done; for wherever the jurisdiction of the magistrates is local, the offence must be proved to have been committed within their jurisdiction. And of this opinion were the court. Therefore the conviction was quashed. *R.* v. *Jefferies*, 1 *T. R.* 241.

Strictness as to locality.

The strictness with which this proof is required, is exemplified by the following case:

R. v. *Hazell*, 13 *East*, 139. *Paley*, 129. This was a conviction on 41 *G.* 3. (*G. B.*) *c.* 38. against a manufacturer for combining to refuse work. The act gives a general form for the conviction, in which it is merely required to state the offence, without any thing pointing to the date or place. The offence was in substance stated in the following manner, viz. "That the defendant on a certain day (he being then employed by *G. S.*, &c. of *Wallington*, in the county before mentioned, in the trade of a calico printer, carried on by them at *Wallington* aforesaid, and whilst he was such workman, and so employed as aforesaid,) refused to work with one *S. B.*, then also employed by *G. S.* &c. in the said manufacture carried on by them at *Wallington* aforesaid." This conviction was quashed, because it was not expressly averred *where* the refusal was given, so that it did not appear to be within the jurisdiction of the magistrate. Ld. *Ellenborough* C. J. in delivering the judgment observed, that the words *then and there* were not to be exploded altogether, and they had sometimes more meaning than was commonly imagined.

Where the sessions, without hearing the merits, quashed a conviction on appeal for a defect in form, the K. B., upon removal of the order by *certiorari*, will quash the order of sessions, if they are of opinion that there is no defect in form; and will send back the case to the sessions, to enter continuances and hear the appeal on the merits. *R.* v. *Ridgway*, *H.* 1822. 5 *B.* & *A.* 527. See *S. C. ante*, tit. Certiorari.

Did, &c. *contrary to the form of the statute in such case made and provided.*] All acts which subject men to new and other trials than those by which they ought to be tried by the common law, ought to be taken strictly. The information must, therefore, contain an exact description of the offence; which, in order to give the justice a jurisdiction, must appear to be within both the letter and spirit of the statute that creates it, and which must be exactly described, that the defendant may know what charge he is to answer. *Bosc.* 25.

But it is sufficient if the conviction be for swearing 150 oaths in these words, viz. (specifying the words once) without repeating each 150 times. *R.* v. *Roberts*, 1 *Str.* 608.

The offence to be particularly set forth in the information.

Thus, in the case of swearing, before the legislature by stat. 19 *G.* 2. *c.* 21. had directed a summary form of words for the conviction, it was required not only to set forth that the person had cursed or sworn in general, but the particular oaths and curses were to be set forth, that the court might judge thereupon, whether they were indeed oaths and curses or not. *R.* v. *Sparr-*

ling, 1 *Str*. 497. *R*. v. *Popplewell*, 1 *Str*. 686. *R*. v. *Chaveney*, 2 *Ld. Raym*. 1368.

And the quantity of the offence is more especially necessary to be shewn in cases where it is the measure of the penalty or damages to be given by the justice. Thus a conviction upon stat. 43 *Eliz*. *c*. 7. § 1. against cutting of trees, &c. was questioned for not mentioning the number of trees cut, being the measure of the damages to be given in that case. *Q*. v. *Burnaby*, 2 *Ld. Raym*. 900. 1 *Salk*. 181.

It has been said, "that a conviction on a penal statute ought expressly to shew, that the defendant is not within any of its provisoes; for," continues the author, "since no plea can be admitted to such a conviction, and the defendant can have no remedy against it, but from an exception to some defect appearing in the face of it, and all the proceedings are in a summary manner, it is but reasonable that such a conviction should have the highest certainty, and satisfy the court that the defendant had no such matter in his favour as the statute itself allows him to plead." 2 *Haw*. *c*. 25. § 113. But this is to be understood with the following limitation, that where the enacting clause of a statute constitutes an act to be an offence under certain circumstances, and not under others, there, as the act is an offence only *sub modo*, the particular exceptions must be expressly specified and negatived; but where a statute constitutes an act to be an offence generally, and in a subsequent clause makes a proviso in favour of particular cases, there the proviso is a matter of defence or excuse which need not be noticed in the information. See 1 *Str*. 555., 2 *id*. 1101. 1 *T. R*. 144, 145. 2 *M. & S*. 539.

Thus, the case of *R*. v. *Clarke*, 1 *Cowp*. 35., was a conviction on stat. 23 *H*. 8. *c*. 9. § 16. against playing at bowls; and the court quashed the conviction because it was not alleged in the information, that the playing at bowls was *out of the defendant's own orchard*, and it is only unlawful *sub modo*.

So in the case of informations on stat. 5 *Ann*. *c*. 14. § 4. for killing game, in which it is now fully settled that it is necessary to state and negative all the qualifications enumerated in stat. 22 & 23 *Car*. 2. *c*. 25. See 1 *Str*. 66. *R*. v. *Hill*, 2 *Ld. Raym*. 1415. *R*. v. *James*, 1 *Burr*. 148. And this is so necessary, that if the qualifications mentioned in stat. 22 & 23 *Car*. 2. *c*. 25. are not set out and negatived in these informations, their being negatived by the evidence will not supply the defect. *R*. v. *Wheatman*, *Doug*. 346.

A summary conviction for any offence created by statute must negative every exception contained in the clause creating the offence; and a defect in omitting so to do is not aided by a proviso in the statute, that "no conviction for any offence in the act shall be set aside for want of form, or through the mistake of any fact, circumstance, or other matter, provided the material facts alleged were proved;" for this in effect requires all material facts to be alleged; and it is a material fact that the defendant did not come within the exception in the enacting clause. *R*. v. *Jukes*, 8 *T. R*. 542.

But if a subsequent statute make any exception to a former one, it is incumbent on the defendant to shew by way of defence that he comes within such exception; and when the prosecutor is not obliged to negative the exceptions in a statute, and he ne-

gives some of them only, that part of the information will be rejected as surplusage. R. v. *Hall*, 1 *T. R.* 320.

So, where negatives are descriptive of the offence, they must be set forth; for what comes by way of proviso in a statute must be insisted on by way of defence by the party accused: but where exceptions are in the enacting part of a law, it must appear in the charge that the defendant does not fall within any of them. *R.* v. *Jarvis*, 1 *East*, 646, 647. *n.*

So, a conviction on stat. 22 & 23 *C.* 2. *c.* 25. §. 7. against *unlawfully killing and taking fish in any river, &c. without the licence or consent of the lord or owner of the water*, was quashed, because it did not describe the offence in the words of the statute, or say that the defendant *stole* the fish, or took and killed the fish of *another person*, or *in another person's pond*. *R.* v. *Mallinson*, 2 *Burr.* 682.

So, in *R.* v. *Trelawny*, 1 *T. R.* 222. the conviction, (which was on stat. 22 *G.* 3. *c.* 47. § 13. against insuring tickets in any state lottery to be authorised by act of parliament,) was quashed, because the information did not express that the ticket insured was a ticket in the state lottery, though the lottery was described as being authorised by stat. 25 *G.* 3. *c.* 59.

In general it is sufficient for the justices, in the description of the offence, to pursue the words of the statute. 1 *Ld. Raym.* 581. But in *R.* v. *Jarvis*, 1 *Burr.* 154. 1 *East.* 647. (*n.*) Mr. J. *Denison* said, "that it is not always sufficient; it may be necessary to go farther." It was so determined in *R.* v. *Chapman*, *Say.* 203. upon a conviction of a person *for robbing an orchard;* which the court held not sufficient, but it ought to have appeared of what, and how the orchard was robbed, that they might judge whether it were a [illegible]ery within the meaning of stat. 43 *El. c.* 7. See *Paley*, 74. (*n.*) [Se]e also *R.* v. *Burnaby*, 2 *Ld. Raym.* 900. where a conviction on stat. 43 *El. c.* 7. § 1. for cutting down trees, was quashed, because it did not mention the number of trees.

The party to be summoned.

Whereupon the said E. F., *after being duly summoned to answer the said charge.*] *R.* v. *Venables*, 2 *Ld. Raym.* 1406. 2 *Str.* 630. The court were unanimously of opinion that the party ought to be heard, and for that purpose ought to be summoned in fact; and that if the justices proceeded against a person without summoning him, it would be a misdemeanor in them, for which an information would lie. *R.* v. *Allington*, 2 *Str.* 678. *S. P.*

Party present and not making defence.

But though justice requires that a party should be duly summoned and fully heard before he is condemned, yet if he be stated to be present at the time of the proceeding, and to have heard all the witnesses, and not to have asked for any further time to bring forward his defence, if he had any, this at all times has been deemed sufficient. *R.* v. *Stone*, 1 *East*, 649. See also 1 *Str.* 261.

The date of the summons must not be on an earlier day than that of the information; if it be it will vitiate the conviction, *R.* v. *Kent*, 2 *Ld. Raym.* 1546.

Nor on an impossible day. In *Reg.* v. *Dyer*, 1 *Salk.* 181. it was stated that the defendant was summoned to appear, and did appear on *Tuesday* the 17th of *April*, 1802, &c. In fact, the 17th *April* fell on a *Friday;* and it being objected that the time of the summons being impossible, it was the same as if there had been no summons. The court quashed the conviction on this ground, saying, "there could be no such day, and therefore he could not

appear thereupon; and when the day is not set forth, his appearance on another cannot be intended." See R. v. *Picton*, 2 *East*, 196. *post*, p. 723.

The summons may be directed either to the offender, requiring him to appear, or to some third person, requiring him to summon the offender.

Natural justice requires that the defendant should have a reasonable time allowed him for making his defence. A conviction upon default of appearance, where the summons was to appear immediately upon the receipt of it, was held bad. *R.* v. *Mallinson*, 2 *Burr.* 679.

Party's appearance cures defects in the summons.

R. v. *Johnson*, 1 *Str.* 261. The defendant was convicted for keeping a gun, not being qualified; and exception was taken, that there was not a reasonable summons; for it was made to appear the same day, which might be impossible upon account of the distance, or the summons being served late; and his witnesses might not be got together on so short a warning: then it was, to appear *at the parish aforesaid,* whereas there were two parishes mentioned before; so the man might have gone to one, whilst they were convicting him at the other. It was answered that the defendant appeared at the time, and made defence; so that cures all defects in the summons; and by the Court, the answer is right.

It is in general convenient to fix the time for the attendance of the parties precisely; though according to the foregoing form, it will appear, that they ought not to be held to a very punctual attendance.

Service of summons.

The service of the summons should be proved upon oath, and it seems that such service should in general be a personal one.

It is evident, that if the defendant appear and make defence, it must be taken that he was duly summoned; therefore, in such case it is unnecessary to say more, and his appearance cures any defect in the summons, or even the total want of one. 1 *Str.* 261. 1 *Salk*, 383. 3 *Burr.* 1785.

Appeared before me [or *us, &c.*] *on the* ——— *day of* ————, *at* ————, *in the said* ————.] See *R.* v. *Dyer*, *ante*, p. 736.

And having heard the charge contained in the said information, declared he was not guilty of the said offence [*or*, as the case may happen to be.]

Party failing through his own default to appear.

Did not appear before me [*or us, &c.*] *pursuant to the said summons, &c.*] It was formerly doubted whether the justice, having summoned the defendant, might, if he did not appear, proceed to hear the evidence and convict him, in cases where the statute does not expressly give such a power, but since the case of *R.* v. *Simpson*, (1 *Str.* 44.) it seems perfectly settled, that a party who does not appear after regular notice, may be convicted in his absence. In *R.* v. *Simpson*, which was a conviction for deer-stealing, it was objected, that as no appeal lies in this case, the justices should not have proceeded in the absence of the party, especially where it may end in a corporal punishment, as it may do here for want of a distress. *Parker* C. J. delivered the resolution of the court:—"We are all of opinion the offender may be convicted without appearing. The statute is silent as to the method of proceeding, and the law of *England* it is true, in point of natural justice, always requires the party charged with an

offence to be heard before he be condemned in judgment: but that rule must have this exception, unless it is through his own default, were it otherwise, every criminal might avoid conviction." *Bosc*. 60. *Paley*, 21.

The information must be read to the defendant, who should be apprised of the charge against him and put to plead thereto, that is, either to confess or deny it, before the justice proceeds to hear evidence in its support. *Vide per Grose, J.* 2 *T. R.* 23.

Witness to be named.

Whereupon I [*or, we, &c.*] *the said justice or justices did proceed to examine into the truth of the charge contained in the said information, and on the* ——— *day of* ——— *aforesaid, at the parish aforesaid. One credible witness, to wit,* A. W. *of* ———, *in the county of* ———.] It is requisite to name the witness, that he may appear to be a different person from the informer (*a*); as the statutes generally give the latter a share of the penalty, and, therefore, he cannot be a witness, excepting where the act shall specially so direct. 2 *Ld. Raym*. 1545. 1 *Str*. 316. *Andr*. 18. 240. *Bosc*. 69.

Magistrate's authority to administer the oath need not be set forth.

On his oath deposeth and saith, [if E. F. be present say] *in the presence of the said* E. F. *at*   *in the county of*   [state the evidence, *&c.*] It is sufficient to set forth in a conviction that the witness was examined on oath, without adding that the magistrate had authority to administer the oath, if the statute give such authority. *R.* v. *Picton*, 2 *East*, 195.

Evidence to be set forth, sufficient to warrant the conviction.

It is fully settled, that in all convictions the evidence must be set out particularly, not merely the result of it; and that sufficient proof must appear upon the face of the record to sustain every material part of the charge, and to warrant the adjudication. *R.* v. *Lovet*, 7 *T. R.* 152.

It is laid down by Lord *Mansfield* (1 *Burr*. 1163.) as an undoubted maxim, that on a conviction, the evidence must be set out in order that the superior court may judge of it. It has been likewise solemnly recognised as a known distinction between orders and convictions, that in the former it is allowed to state the result only of the evidence, whereas the same mode of stating it would be undoubtedly bad in a conviction. (*R.* v. *Lloyd*, 2 *Str*. 999.) In a very early case (*Reg.* v. *Green*, 10 *Mod*. 215.) the conviction was quashed, because the evidence was not set forth. It was only laid that the witnesses were sworn *de veritate præmissorum*, and that it did not appear from what was sworn, that the defendant was guilty; but, it was said, it ought so to have appeared to the court.

Again, a conviction for taking pilchards *contra formam statuti* was quashed, and the reason assigned was, because the witness swore generally that the defendant was *guilty of the premises*; for that is taking the law upon himself. Likewise a conviction on the candle act was set aside, because the evidence was not set out, it being only alleged that the offence was *fully and duly proved*. *R.* v. *Baker*, 1 *Str*. 316. *R.* v. *Theed*, 2 *Str*. 919. 2 *Barnard*. 16. 73.

As to the difference between stating facts in the information and in the evidence.

But in those cases where the offence is created in a section in a statute, which section contains particular exceptions, though it is necessary to negative every one of those exceptions in the information, *Dougl*. 331: it has been doubted whether or not it be

(*a*) In what cases informers may be witnesses, see *tit.* Evidence, § III.

necessary also to negative them in the evidence given in support of the charge. In *R.* v. *Jarvis*, 1 *Burr.* 154. Mr. J. *Denison* said, it was necessary to negative by *the evidence* and adjudication that the defendant had any of the particular qualifications to kill game; that being a conviction on the game laws. But it has recently been determined by the court of K. B., (*R.* v. *Turner*, 5 *M.* & *S.* 206. 2 *Phill. Ev.* 25. 189.) that a conviction which specifically negatives the several qualifications mentioned in the statute, is sufficient, without stating evidence to negative those qualifications. *Lawrence* J. and *Le Blanc* J. were of this opinion, in *R.* v. *Stone*, 1 *East*, 653. *Vide* Vol. II. tit. Game, p. 571.

In the latter cases where the necessity of setting out the evidence has been discussed, the judges have uniformly expressed their wish that it should be fully set forth; and stat. 3 *G.* 4. *c.* 23. expressly requires the evidence given by each witness to be stated.

But the evidence may be stated in the words of the act.

And if a conviction state in the words of the statute the deposition of the witness to the fact, it is sufficient: but if the magistrate endeavour to shelter himself from detection by merely stating the fact of the offence in the terms of the act of parliament, as if it were the legal effect of the evidence, when the evidence itself would not warrant the conclusion, he subjects himself to a criminal information, upon a proper case laid before the court. *R.* v. *Pearse*, 9 *East*, 358.

To be given in the presence of the defendant.

R. v. *Vipont and others*, 2 *Burr.* 1163. The conviction was, that the defendants *having heard the charge*, (of conspiring to advance their wages in the woollen manufacture,) and being called upon by the justices to shew cause why they should not be convicted, and having nothing to say whereby to defend themselves, are therefore convicted: this was quashed by the court; because the evidence ought to be particularly set forth, that the court may judge thereof; and it must be given in the presence of the defendant, that he may have an opportunity of cross examination. *R.* v. *Crowther*, 1 *T. R.* 127. and *R.* v. *Benwell*, 6 *T. R.* 75. *Bosc.* 71.

But, though the evidence ought to be given in the presence of the defendant, if the appearance of the defendant and the examination of the witness are both stated on the same day, the court will presume that the witness was examined in the presence of the defendant, though it be not expressly so stated. 3 *Burr.* 1786. *Cowp.* 241, 242. 2 *T. R.* 23. and *R.* v. *Lovet*, 7 *T. R.* 152.

Even though it be stated that the appearance was at *A.* and the evidence was given at *B.* *R.* v. *Swallow*, 8 *T. R.* 284.

Witness must be sworn and examined in the defendant's presence.

The witness must be sworn and examined in the defendant's presence, even though he were sworn when the information was taken. And therefore it is not sufficient in such a case to read over the informant's deposition in the presence of the defendant. *R.* v. *Crowther*, 1 *T. R.* 125.

The evidence, when set forth, must contain sufficient to warrant the conviction. Therefore it must be of a fact existing at the time of the information; and so it must appear. In *R.* v. *Fuller*, 1 Ld. *Raym.* 509. a conviction on stat. 8 & 9 *W.* 3. *c.* 19. for keeping two concealed washbacks was quashed, because, though the information, which was given on the 30th *March*, charged the defendant with then having the washbacks, the evidence, which was

not given until the 3d of *April*, was merely that the defendant *habet et custodit eadem duo et concelata vasa*; confining it to the time when the evidence was given, and of course subsequent to the day of the information.

So it should appear that the fact was proved to have been committed in some place within the jurisdiction of the magistrate. *R.* v. *Jeffries*, 1 *T. R.* 241.

If the defendant, when put on his defence, sets up a claim of right to the thing he is accused of taking or destroying, and there is any pretence or colour for such right, the justice ought to acquit him. *Per* Ld. Ch. J. *Holt* in *R.* v. *Speed*, 1 Ld. *Raym.* 583.

Defence.

Acquittal.

The defence should be set forth in the conviction.—Where the justices acquitted the defendant, upon evidence which *primâ facie* was sufficient to convict, and there being no contradictory or explanatory evidence; the court said that the evidence given was entirely and exclusively for the consideration of the justices below, who were placed in the situation of a jury: and as they had acquitted the defendant, the court could not substitute themselves in the place of the justices acting as jurymen, and convict him. That they could not judge of the credit due to the witnesses whom they did not hear examined. That they could only look to the form of the conviction, and see that the party, if convicted, had been convicted by legal evidence. *R.* v. *Reason*, 6 *T. R.* 375.

It is sufficient in convictions, if there were such evidence before the magistrate as in an action would be sufficient to be left to a jury. *Per* Ld. *Kenyon* C. J. *R.* v. *Davis*, 6 *T. R.* 178.

Where a power of conviction is given by statute to a magistrate, he is the sole judge of the weight of the evidence given before him, and the court of K. B. will not examine whether or not he has drawn a right conclusion from the evidence. But if no evidence appear on the conviction to support a material part of the information, the court will quash the conviction. *R.* v. *J. Smith*, 8 *T. R.* 588.

Confession, how stated.

[If the defendant confess, instead of stating the evidence, say] *and the said* E. F. *acknowledged and voluntarily confessed the same to be true*.] In general, if the defendant confess the offence, it is needless to go into the proof of it. But this is to be understood of a confession to the full extent of a good and sufficient information; for where either the confession does not come up to the charge in the information, or is made upon an insufficient information, it will not supply the want of evidence in the one case, or of a sufficient charge in the other.

Thus, in *R.* v. *Little*, 1 *Burr.* 613. Confession by the defendant of a single fact of offering to sell silk handkerchiefs without a licence, was holden not sufficient to convict him of a *trading* as a hawker, pedlar, or petty chapman, without licence; because a *single act* of selling a parcel of silk handkerchiefs to a *particular person* is not a proof that he was such a hawker, pedlar, or petty chapman, as ought to have taken out a licence. Conviction quashed. (For the conviction in this case, see *Paley*, 69.) See also *tit.* "Hawkers and Pedlars," Vol. II. p. 800.

But in another case upon the same statute, it was alleged, that the defendant was apprehended for trading *as a hawker and pedlar*, and was charged upon oath before the justice with having

sold a piece of muslin *as a hawker, pedlar, and petty chapman,* which fact he confessed; this was held to be sufficient to warrant a conviction for not producing a licence as demanded by the justice. *R.* v. *Smith,* 3 *Burr.* 1475.

R. v. *Corden,* 4 *Burr.* 2279. was the case of a confession of an insufficient charge; and the conviction, which was on stat. 5 *G.* 3. *c.* 14. for preserving fish, not being on the complaint of the owner, nor shewing his dissent to the fishing, and the property not being proved on oath, was quashed.

As to the power of the justices to take the confession of the defendant. It has been determined, that though the act only empowers the justice to convict upon the oath of one or more witnesses, this implies a power to convict upon the confession of the party alone. *R.* v. *Gage,* 1 *Str.* 546.

Pleading guilty.

As the confession supplies the want of evidence, so it cures any objection to the manner of taking the depositions; such for instance, as that they were not made in the defendant's presence. *R.* v. *Hall,* 1 *T. R.* 320. *Paley,* 23.

Two or more offences in one conviction; and the adjudication being of the *said* offence.

Do hereby convict him of the offence aforesaid.] *R.* v. *Salomons,* 1 *T. R.* 249. This was a conviction on the lottery act, 22 *G.* 3. *c.* 47. The information as set forth in the conviction was *that Salomons did keep an office for dealing in shares of lottery tickets without a licence: and also did keep an office for registering the numbers of lottery tickets without a licence, &c.* and the said *Salomons* was thereupon convicted *of the said offence charged upon him* in and by the said information, &c. according to the form of the statute, &c. for which *said offence* he was adjudged to have forfeited 100*l.* By the court: The conviction is bad, for there is a duplicity of charge; the defendant is charged with *dealing in shares of lottery tickets,* and with *registering tickets without licence;* and he is convicted of the *said* offence, so that it does not appear of which offence he is convicted. A conviction must be good in all its parts: the information must be supported by the evidence, and the judgment must be supported by both. Here the defendant is charged with two distinct offences, each of which would subject him to a separate penalty; and supposing they could have been included in one conviction, which is to be doubted (*a*), the defendant should have been convicted of both. A judgment for too little is as bad as a judgment for too much. Conviction quashed.

(*a*) Sed vide. *Rex* v. *Swallow,* infra.

It has been held that a judgment in these terms, viz. "that *R. T.* (the defendant,) according to the form of the statute, is convicted," is a sufficient adjudication that he is convicted of the offence. *R.* v. *Thompson,* 2 *T. R.* 18.

It is no objection to a conviction, that the defendant has been convicted of several penalties. It is the constant practice in actions on the game laws, and not unfrequent in convictions. *R.* v. *Swallow,* 8 *T. R.* 286.

But under particular acts of parliament only one offence can be committed on the same day. As under stat. 29 *Car.* 2. *c.* 7. for exercising a trade on the Lord's day. *Crepps* v. *Durden,* 2 *Cowp.* 640.

So under stat. 5 *Ann. c.* 14. § 4. for keeping or using a dog or gun. *R.* v. *Matthews,* 10 *Mod.* 26., and *Marriott* v. *Shaw, Com.* 274. *R.* v. *Lovet,* 7 *T. R.* 152.

But under stat. 12 *G.* 2. *c.* 36. for selling books originally printed here, and afterwards reprinted abroad and imported into this country, the party may incur several penalties on the same day for several distinct acts of sale of such books here. *Brooke* q. t. v. *Milliken*, 3 *T. R.* 509.

But this question must in all these cases depend on the nature of the act that constitutes the offence.

Forfeiture must be ascertained.

And do declare and adjudge, that he the said E. F. *hath forfeited the sum of* ——— *of lawful money of* G. B. *for the offence aforesaid.*] *R.* v. *Hawkes*, 2 *Str.* 858. A conviction for killing a deer was quashed, because it was only — *he is convicted*, without any judgment of forfeiture.

And in the case of *R.* v. *Vipont and others*, 2 *Burr.* 1163. *ante*, 739. the conviction *not adjudging the forfeiture* was, for that reason, as well as the other before mentioned, determined to be ill; especially as the statute, upon which the conviction was made, leaves the judgment discretionary concerning the duration of the punishment, the offender being to be imprisoned by the justices for any time not exceeding three months; *et vide R.* v. *Ashton*, 8 *Mod.* 175.

If the imprisonment be not for any certain period, but generally till the payment of a fine, or the performance of some other act, the condition must be distinctly expressed, and such as is authorised by statute. If it be till payment, the sum must be fixed. Thus a conviction and commitment for a forcible entry, "there to remain till they shall have paid a fine to the king," the justices not having assessed any fine, was held to be irregular. *R.* v. *Elwell*, 2 *Ld. Raym.* 1514. *Paley*, 190. See *ante*, *tit.* Commitment, p. 678.

So under stat. 6 *G.* 3. *c.* 48. § 1. which empowers the magistrate to commit till the penalty and charges are paid, a commitment for nine months, or until the sum of 15*l.*, "together with charges previous to and attending the conviction, shall be paid," was held to be bad for want of ascertaining the exact sum, by the payment of which the defendant might be released. *R.* v. *Hall*, 1 *Cowp.* 60.

And there must be an adjudication.

Even in cases where the punishment is fixed by statute there must be an adjudication; for the want of which the conviction in *R.* v. *Harris*, 7 *T. R.* 238. was quashed. In that case Ld. *Kenyon* C. J. said, "A conviction is in the nature of a verdict and judgment, and therefore must be precise and certain."

In the construction of the toleration act, 1 *W.* & *M.* *c.* 18. § 18. which inflicts a penalty of 20*l.* on any person or persons who may disquiet or disturb any congregation permitted by that act, it has been decided that several persons for a joint disturbance are liable to separate penalties of 20*l.* each. *R.* v. *Hube and others*, 5 *T. R.* 542. *Vide post.* tit. Dissenters.

Distribution.
Mitigation.

To be distributed [*or paid*, as the case may be] *according to the form of the statute in that case made and provided.*] The mitigation of penalties is not of course, but depends upon the power given to justices by particular acts of parliament, to exercise their discretion in this case, within certain bounds, in the instances mentioned in those acts.

18 G. 3. c. 19.

By stat. 18 *G.* 3. *c.* 19. Where any complaint shall be made before any justice or justices of the peace, and any warrant or summons shall issue in consequence of such complaint, then it shall be lawful for such justice or justices, who shall have heard and

determined the matter of the said complaint, to award such costs to be paid by either of the parties, and in manner and form as to him or them shall seem fit, to the party injured. (*a*)

When an act gives power to a magistrate on a summary conviction, to award the reasonable charges of taking a distress, he must ascertain the amount in the conviction: and an adjudication that the defendant shall pay the *reasonable* charges of the levy is bad. *R.* v. *Symons*, 1 *East*, 189.

Given under my hand (or, our hands, &c.) and seal, the —— day of ——, in the year of our Lord.] A conviction should be under the hand and seal of the magistrate; and a justice ought to give the defendant a copy of the conviction, if he demands it; it is a record (*b*), and he is entitled to it. *R.* v. *Midlam*, 3 *Burr.* 1720.

An impossible or an incongruous date, if the conviction be complete without it, may be rejected as surplusage, and will not vitiate. *R.* v. *Picton*, 2 *East*, 196.

Conviction to be returned to the session.

In all cases a justice of the peace ought to return a conviction by him to the sessions, whether the party appeal or not, or whether an appeal is or is not given, that the crown may not be deprived of its share of forfeitures. *R.* v. *Eaton*, 2 *T. R.* 285.

A conviction may be drawn up after the penalty has been levied.

R. v. *Barker*, 1 *East*, 185. On a motion for a criminal information against a magistrate, for returning to a writ of *certiorari*, a conviction of a party in another and more formal shape than that in which it was first drawn up, and of which a copy had been delivered to the party convicted by the magistrate's clerk, Ld. *Kenyon* C. J. said, "If the magistrate has done no more than return the conviction in a more formal shape, instead of sending it up in the informal manner in which it was first drawn, and supposing that the facts as they really happened will warrant him in the return he has now made, I am of opinion, that it was not only legal but laudable in him to do as he has done; and he would have done wrong if he had acted otherwise. It is a matter of constant experience for magistrates to take minutes of their proceedings without attending to the precise form of them at the time when they pronounce their judgment to serve as memorandums for them to draw up a more formal statement of them afterwards, to be returned to the sessions, and it is by no means unusual to draw up the conviction in point of form after the penalty has been levied under the judgment, nor is there any legal objection to this method, provided the facts will warrant them in stating what they do. It is no answer to say that a party convicted may be thereby induced to incur an unnecessary expense in suing out a *certiorari*, to get rid of an informal conviction; for a mere informality, in the manner of drawing up a conviction, ought not to be the inducement for removing it into this court, but some substantial defect in the justice and legality of the proceeding itself before the magistrate."

If by mistake and without any intention to

R. v. *Allen*, 15 *East*, 332. The appellant had received from the convicting magistrates a copy of his conviction, which was written on the back of the information, and contained an erroneous state-

(*a*) For the manner of levying such costs, and other regulations made by 18 *G.* 3. *c.* 19. see *post*, title Costs.

(*b*) A Record is a memorial or remembrance in rolls of parchment. 1 *Inst.* 260. — In general, I think, a conviction ought to be upon parchment, but if on paper it is good in law, unless the statute directs otherwise. — Ed.

mislead, a copy be delivered to the party, mistaking the name of the informer, and a correct one be returned to the sessions, that court can only take notice of the latter.

ment (mistaking between the informer and the witness), the same justices having returned to the sessions to be filed of record a regular conviction of the same date, and stating correctly the actual circumstances, the sessions quashed the conviction as being at variance with the minutes of that delivered to the appellant, without entering into the merits of the case, but the court of K. B. quashed the order of sessions generally, thereby setting up the original conviction, considering that the variance arose from the mere mistake and irregularity of the justices' clerk, and that the appellant had not really been surprised by it, but had waved his appeal on the merits.

Upon a conviction by two justices for an offence against stat. 17 *G*. 3. *c*. 56. § 14. if the justices, at the time of such conviction, make known to the party convicted his right to appeal, and he declines appealing, they need not go on to inform him what he must do in order to appeal and enforce his right. *R*. v. *Justices of W. R. of Yorkshire*, 3 *M*. & *S*. 493.

As to removing convictions by *certiorari*, *vide ante*, *tit*. "Certiorari."

Cordage for Shipping; and Stores of War.

§ I. *Cordage for Shipping.*
[25 G. 3. c. 56.]

II. *Stores of War.*
[31 El. c. 4. — 22 C. 2. c. 5. — 9 & 10 W. c. 41. — 1 G. st. 2. c. 25. — 9 G. c. 8. — 17 G. 2. c. 40. — 9 G. 3. c. 30. — 12 G. 3. c. 56. — 39 & 40 G. 3. c. 89. — 53 G. 3. c. 126. — 54 G. 3. c. 60. — c. 159. — 55 G. 3. c. 127. — 56 G. 3. c. 80.]

I. Cordage for Shipping.

25 G. 3. c. 56. Short chucking, &c. not to be used in making cordage for shipping.

BY stat. 25 *G*. 3. *c*. 56. § 2. No person, after 25th *July*, 1785, shall use, in the making of *cables*, *hawsers*, or other ropes for the use of shipping, or knowingly sell the same, in the manufacturing whereof there shall be used any hemp, usually known by the names of short chucking, half clean, whale line, or other toppings, cordilla, damaged hemp bought at a public or other sales, or any hemp from which the staple part thereof shall have been taken away by the manufacturer; on pain of forfeiting (if he be the manufacturer thereof) such cable, hawser, or other rope, and treble the value thereof; and the vender thereof, knowingly, (and not being the manufacturer) shall forfeit treble the value thereof.

Cordage to be distinguished as *staple* and *inferior*.

§ 3, 4. For better distinguishing the quality of such cables, &c. whenever the same shall be manufactured in whole or in part of any hemp, the use whereof is not prohibited by this act, and the quality whereof shall be inferior to clean *Petersburgh* hemp, the

same shall be deemed *inferior cordage*, and the maker shall distinguish the same by running from end to end of each cable three tarred mark-yarns, spun with turn contrary to that of rope yarn, and also one like tarred yarn in every other rope for the use of shipping; and shall mark or write on a tally to be affixed thereon the word *staple* or *inferior* (as the case shall be), and also his name signed by himself or his attorney, together with the name of the place where manufactured; and in default thereof every such manufacturer shall for every offence forfeit 10*s*. for every hundred weight.

And maker's name to be affixed.

§ 5. And if any rope-maker shall wilfully or knowingly permit or suffer his name to be put as aforesaid on the tally of any cable, &c. not being of his own proper manufacturing; or if the vender or proprietor of any such cable, &c. or any other person whomsoever wilfully and knowingly mark upon the tally affixed thereon the name of any person, not being the manufacturer thereof, he shall forfeit 20*l*.

Penalty on putting a false name on cordage.

§ 6. And if any person shall make any cables of any old or worn stuff, which shall contain above seven inches in compass, he shall forfeit four times the value thereof.

Penalty on making cables of old stuff.

§ 8. And when any ship belonging to any of H. M.'s subjects resident in *G. B.* or in the *British* colonies shall come into any port in this kingdom, the master at the time of making his entry at the custom-house, shall make entry on oath of all foreign made cordage on board, for which no duties have been paid (standing and running rigging in use excepted); and such master shall, before such ship be cleared inwards, where any discharge shall be made of her lading, pay for such foreign made cordage, as shall be specified or mentioned in the said entry, the like duties as by the laws now in being, are charged upon foreign made cordage imported into this kingdom; and if such master shall make default herein, such foreign-made cordage on board such ship shall be forfeited, and he shall also forfeit 20*s*. for every hundred weight thereof.

Importing cordage.

§ 9 & 10. But the same shall not extend to cordage brought from the *East Indies*; nor to the materials at present in the use of any ship built abroad before the passing of this act, the property of any *British* subject.

§ 7. All pecuniary penalties or forfeitures by this act imposed exceeding 5*l*. are to be recovered in the courts of *Westminster*; if not exceeding 5*l*. the same may be levied by distresss, by one justice, on the oaths of *two* witnesses; and if sufficient distress cannot be found, such justice shall commit the offender to the common gaol or house of correction for any time not exceeding three calendar months, nor less than seven days, or until such penalty and all costs and charges attending the same shall be paid. And all such penalties and forfeitures, and also all cordage which shall be forfeited, shall be paid and delivered to the person who shall sue, who may sell or otherwise dispose of such cordage (after being cut into lengths not exceding twelve feet) to his own use.

Penalties how to be recovered and applied.

§ 11. If any person shall think himself aggrieved by any thing done in pursuance of this act, and for which no particular method of relief is appointed, he may, within four months after such matter done, appeal to the sessions, giving fourteen days' notice, in writing, of his intention to appeal and the matter thereof to the

Appeal.

25 G. 3. c. 56. person appealed against, and within four days after giving such notice entering into recognisance before some justice for the county, city, or place, with two sureties, to try such appeal, and abide the order, and pay such costs as shall be awarded at such sessions; and on due proof of such notice, the justices at such sessions shall hear and finally determine such appeal, and award such costs as they shall think proper.

Proceedings not to be quashed, nor distress deemed unlawful for want of form.

§ 12. And no order, verdict, judgment, or other proceeding shall be quashed for want of form only, or be removed by *certiorari*, &c. &c.

II. Of Stores of War.

Embezzling to the value of 20*s*.

By stats. 31 *Eliz. c.* 4. § 1. and 22 *C.* 2. *c.* 5. § 3. If any person, having the charge or custody of any of the king's armour, ordnance, ammunition, shot, powder, or habiliments of war, or of any victuals provided for any soldiers, gunners, mariners, or pioneers, shall for lucre or gain wittingly, advisedly, and of purpose to hinder his majesty's service embezzle, purloin, or convey away the same to the value of 20*s*., or shall feloniously steal or embezzle any of H. M.'s sails, cordage, or any other of H. M.'s naval stores, to the like value of 20*s*. at one or several times; he shall (on prosecution within a-year, 22 *C.* 2. *c.* 5.) be adjudged guilty of felony without benefit of clergy. 2 *East's P. C.* 621.

Habiliments extend to harness and all utensils that belong to war. 3 *Inst.* 79.

9 G. 3. c. 30.

By stat. 9 *G.* 3. *c.* 30. § 5. The treasurer, comptroller, surveyor, clerk of the acts, or any commissioner of the navy, may act as justices, in causing the offenders to be apprehended, committed, and prosecuted for the same.

1 G. 1. st. 2. c. 25. Under the value of 20*s*.

And by stat. 1 *G.* 1. *st.* 2. *c.* 25. § 3. Any of the principal officers or commissioners of the navy may issue warrants to search for the same, and punish the offenders by fine not exceeding 20*s*., or imprisonment not exceeding one week, the value of the goods not exceeding 20*s*.; and cause the goods to be brought in again; and if the offence require a higher punishment, may commit him to the gaol, or the custody of their messengers, till he find surety or sureties according to the nature of the offence, to appear in the exchequer, or other court where the king shall question him for the same, within one year, on process duly served for that purpose on such offender.

Counterfeiting a naval officer's hand.

§ 6. And every person who shall counterfeit the hand of any such officer of the navy, or of any signing or vouching officer, to any paper whereby H. M.'s naval treasure may be disposed of, or knowingly produce the same, he may be bound over by the said officers or commissioners, or any one of them, until he find surety to appear at the next assizes or quarter sessions, to be there proceeded against according to law.

9 & 10 W. 3. c. 41. Making stores with the king's mark.

By stat. 9 & 10 *W.* 3. *c.* 41. No person other than persons authorised by contracting with H. M.'s principal officers, or commissioners of the navy, ordnance, or victualling-office, shall make any stores of war or naval stores with the king's mark, that is, cordage of three inches and upwards with a white thread laid the contrary way, or any smaller cordage with a twine in lieu of white thread laid to the contrary way, or any canvass wrought or un-

wrought, with a blue streak in the middle, or any other stores with the broad arrow; on pain that every person so marking, and not being such contractor, shall forfeit the same, and 200*l.* with costs, on conviction at the assizes or sessions; one moiety to the king, the other to the informer. 2 *East's P. C.* 756. See stat. 17 *G.* 2. *c.* 40. § 10, *infra.*

9 & 10 W. 3. c. 41.

§ 2. And such person in whose custody, possession, or keeping, such goods or stores so marked (or any timber, thick stuff, or plank, marked with the broad arrow, 9 *G.* 1. *c.* 8. § 3.) shall be found not being employed as aforesaid, and such person who shall conceal such goods or stores so marked as aforesaid, being indicted and convicted thereof, shall forfeit the same and 200*l.* with costs in like manner, and be imprisoned till payment and performance, unless he shall upon trial produce a certificate from three principal officers of the navy, ordnance, or victuallers, expressing the numbers, quantities, or weights, and on what occasion he came by them.

Penalty on persons in whose custody such marked stores are found.

But by stat. 9 *G.* 1. *c.* 8. § 4. the judge or justices may mitigate the penalty as they shall see cause, and may commit the offender to gaol till payment, or may punish him corporally by causing him to be publicly whipped, OR committed (*a*) to some public workhouse to be kept to hard labour for six months, or a less time if thought meet. 2 *East's P. C.* 758.

9 G. 1. c. 8. **Mitigation.**

Stat. 17 *G.* 2. *c.* 40. § 10. after reciting doubts whether stats. 9 & 10 *W.* 3. *c.* 41. and 9 *G.* 1. *c.* 8. gave jurisdiction to judges, justices of assize, justices of the peace at their sessions to try such offences, enacts and declares, that any judge, justices of assize, or justices of the peace as aforesaid, may hear and determine such offences, &c. and may impose any fine not exceeding 200*l.* and mitigate the penalty inflicted by those acts, and commit the offender to the common gaol of the county, there to remain until payment, &c. or in lieu thereof to punish such offender in the premises corporally, by causing him to be publicly whipped, AND committed to some house of correction or public workhouse, there to be kept to hard labour for three months or less time, as shall seem meet.

17 G. 2. c. 40. **Judges at the assizes, and justices at sessions may try offence specified in 9 & 10 W. 3. c. 41. & 9 G. 1. c. 8.**

Under this last clause a defendant, in 34 *G.* 3. *B. R.* was sentenced to *Clerkenwell* prison for three months, there to be kept to hard labour, and during that time to be publicly whipped. *R.* v. *W. Bland*, 5 *T. R.* 370.

By stat. 12 *G.* 3. *c.* 24. If any person shall either in this realm or in any place thereto belonging wilfully and maliciously set on fire, or burn, or otherwise destroy, or cause or aid therein, any of H. M.'s military, naval, or victualling stores or other ammunition of war, or any place where any such stores or ammunition shall be placed or kept; he, his aiders and abettors, shall be guilty of felony without benefit of clergy. And they who commit any such offence out of the realm, may be tried either where the offence was committed, or in any county within this realm.

12 G. 3. c. 24. **Burning or destroying stores.**

By stat. 39 & 40 *G.* 3. *c.* 89. § 1. Every person (not being a contractor, or employed as by 9 & 10 *W.* 3. *c.* 41. is mentioned) who

39 & 40 G. 3. c. 89.

(*a*) Observe here that in stat. 9 *G.* 1. *c.* 8. § 4. this sentence is disjunctive, *viz.* "*or* committed:" but in stat. 17 *G.* 2. *c.* 40. § 10. it is conjunctive, *viz.* "*and* committed."

39 & 40 G. 3. c. 89.
Persons (other than contractors) receiving or having stores of war in their possession.

shall willingly or knowingly sell or deliver, or cause to be sold or delivered, or shall knowingly receive, or have in his custody, possession, or keeping, any stores of war, or naval ordnance, or victualling stores, or any goods whatsoever marked as in the said recited act is expressed, or any canvass, marked either with a blue streak in the middle, or with a blue streak in a serpentine form, or any bewper otherwise called *buntin*, wrought with one or more streaks of raised tape, the same being in a raw or unconverted state, or being new, or not more than one-third worn; and such person, who shall conceal any such stores or goods marked as aforesaid, shall be deemed a receiver of stolen goods, knowing them to have been stolen, and shall, on conviction, be transported for fourteen years; unless he shall upon his trial produce a certificate under the hands of three or more of the principal officers or commissioners of the navy, ordnance, or victualling, expressing the number, quantity, or weight of such stores or goods, and the reason of the same coming into his possession. 2 *East's P. C.* 760. 2 *Russ.* 1328.

Further punishment of persons convicted of offences against 9 & 10 W. 3.

§ 2. And every person (except as aforesaid) in whose custody shall be found any canvass or buntin marked or wrought as aforesaid, not being new, nor more than one-third worn, and all persons who shall be convicted of any offence contrary to so much of the said act of 9 & 10 *W.* 3. as relates to the making or having in possession, or concealing any such stores, besides forfeiting such stores and the sum of 200*l.* as therein specified, shall be punished by pillory (*a*), whipping, and imprisonment, or by any of the said ways, in such manner and for such time as to the judge or justices before whom such offender shall be convicted, may seem meet; provided that such judge or justices may mitigate such penalty of 200*l.* as they shall think fit.

How far 9 & 10 W. 3. shall extend to contractors.

§ 3. Provides, that nothing in the said act of 9 & 10 *W.* 3. or this act contained shall extend to exempt from the operation of this act any contractor or person employed as aforesaid, except only so far as concerns stores marked as aforesaid, which shall be *bonâ fide* provided, made up, or manufactured by such person, and which shall not have been before delivered into H. M.'s store, unless having been so delivered they shall have been sold or returned to such person by the said commissioners.

Defacing marks.

§ 4. And if any person shall wilfully and fraudulently destroy, beat out, take out, cut out, deface, obliterate, or erase, wholly or in part, any of the marks mentioned in the said act of 9 & 10 *W.* 3., or this act, denoting such stores to be the property of H. M., or cause any other person to do so, for the purpose of concealing H. M.'s property therein, he shall be deemed guilty of felony, and shall be transported for fourteen years.

Persons convicted of a second offence to be transported.

§ 5. If any person, convicted of any offence against this act, for which he shall not have been transported, or contrary to the said act of 9 & 10 *W.* 3. shall be guilty of a second offence, which would not otherwise as the first offence subject him to transportation, he shall, on conviction for such second offence, be transported for fourteen years.

Punishments may be mitigated.

§ 7. And the court before whom any offender shall be convicted for offences punishable with transportation, may mitigate

(*a*) This punishment is abolished except in certain cases by stat. 56 *G.* 3. *c.* 138. see tit. Pillory, &c. Vol. III.

the same by causing such person to be set on the pillory (*a*), publicly whipped, fined, or imprisoned, or by all or any of the said ways, as such court shall think fit: one moiety of all such fines shall go to H. M., and the other to the informer; and the court may also order such offender to be imprisoned until such fine be paid.

39 & 40 G. 3. c. 89.

§ 11. And any commissioner of the navy, ordnance, or victualling, or justice, may upon the oath of one witness that there is reason to suspect that such stores or goods belonging to H. M. are concealed in any dwelling-house, warehouse, workshop, outhouse, yard, garden, or other place, or on board any ship, vessel, or boat, &c. by warrant under his hand and seal, cause every such house, &c. &c. to be searched in the day-time by any peace officer; and if any stores marked as aforesaid be found, may cause the same and the offender to be brought before him, and may commit, bind over, or otherwise deal with such offender according to law: in case upon such search any stores not so marked shall be found, which may reasonably be suspected to belong to H. M., the person in whose possession the same shall be found shall be required to give an account to the satisfaction of such commissioner or justice, that the same were not embezzled or stolen from H. M., or that they came into his possession honestly, without any suspicion of their having been embezzled or stolen; and on failure thereof, by a reasonable time to be set by such commissioner or justice, such stores shall be forfeited, and such party shall be deemed guilty of a misdemeanor.

Houses, &c. may be searched where stores are suspected to be concealed.

§ 12. Any persons deputed by the said officers or commissioners may search and detain any barge or craft in which may be suspected to be contained any articles stolen, embezzled, or unlawfully procured from H. M.'s vessels or other places, and may apprehend and detain any person who may be reasonably suspected of having or conveying any such stores or articles on board, and convey him before any such commissioner or justice, together with such articles and stores so found, who shall commit, or bind over, or otherwise deal with such person according to law in respect to such things as shall be marked as aforesaid; and in respect to such as shall not be so marked, but which shall be reasonably suspected to be the property of H. M., the person on whom the same shall be found shall be required to give an account to the satisfaction of such commissioner or justice that the same were not embezzled or stolen, or if so that they had come into his possession honestly, and without suspicion of their having been so embezzled or stolen; and on failure thereof by a reasonable time to be set as aforesaid, such last-mentioned stores or things shall thereupon become forfeited, and such person so apprehended shall be deemed guilty of a misdemeanor; and in case such person shall be convicted of stealing, embezzling, or unlawfully having any which shall be so marked in his possession, or shall be adjudged guilty of a misdemeanor for not giving a satisfactory account as aforesaid with respect to such as shall not be so marked, such barge or craft, with its tackle and furniture, shall be forfeited, and shall be disposed of as hereafter mentioned.

Persons deputed may detain craft, &c. suspected of having stolen articles on board.

(*a*) See *note* in preceding page.

39 & 40 G. 3. c. 89.

Persons so deputed may apprehend suspected persons.

§ 13. Any person so deputed, or any police officer, constable, or other peace officer or watchman, when on duty, may apprehend any person reasonably suspected of having, or carrying, or conveying, any such stores, &c. and also may seize and detain in some place of safety any such stores and things so suspected to have been stolen, &c. as aforesaid, and may convey the same and such person before such commissioner or justice; and the like proceedings shall be had against such person with respect to such stores and things, whether marked or not, as above directed, with respect to any stores found in any barge or craft.

Articles herein declared forfeited, to be returned into his majesty's stores.

§ 14. And all stores and things hereinbefore declared forfeited, on the parties not giving a satisfactory account that the same were not embezzled or stolen as aforesaid, shall be returned into H. M.'s store, and applied for the use of H. M.; unless proof be made within three calendar months next following such seizure, to the satisfaction of such commissioner or justice, that such stores and things are the property of some other person, in which case they shall be forthwith delivered up to such person, on his giving a proper receipt for the same, and paying the charges attending the conveyance thereof to and from H. M.'s store, and the safe custody thereof from the time of seizure, to be set by such commissioner or justice.

Craft, &c. forfeited may be sold.

§ 15. And such commissioner or justice by whom any such barge or craft shall be so adjudged to be forfeited shall issue his warrant to the collector or other chief officer of the customs where such seizure was made for the sale of such barge or craft; who shall within one month cause the same to be sold, notice of such sale being given in some public paper circulating in the place where such sale shall be; and the money arising by such sale, after payment of the expenses of sale, and securing the barge, &c. shall be paid to such commissioner or justice, who within one calendar month after shall pay one moiety thereof to the person who made the seizure, and the other moiety to the treasurer of the navy, if victualling or naval stores, and if ordnance stores, then to the treasurer of the ordnance.

Penalty on persons guilty of misdemeanors.

§ 16. Every person adjudged guilty of any misdemeanor aforesaid before such commissioner or justice shall forfeit for the first offence 40*s.*, for the second 5*l.*, and for the third and every subsequent offence 10*l.*, over and above all other forfeitures, to be levied by distress by warrant of such commissioner or justice; and which shall be disposed of, one moiety to the person who shall apprehend such offender or give information, as the case may be, and the other moiety to the treasurer as aforesaid; and on a return being made by the constable, within a reasonable time to be set by the justice, that there is insufficient distress, the offender, who shall meanwhile be kept in custody, shall be committed to the common gaol, without bail, for three calendar months, unless such penalty be sooner paid.

Adjudications of misdemeanors to be certified to the sessions.

§ 17. And every such adjudication of such misdemeanor shall be certified by such commissioner or justice to the next sessions, to be there filed; and such conviction shall not be set aside or quashed for want of form, nor be removed by *certiorari;* but shall be final to all intents and purposes whatsoever.

One commissioner or jus-

§ 18. Every such principal officer, or commissioner, or justice, may hear and determine in a summary way any complaint against

any person (not a contractor or employed as aforesaid) for unlawfully selling or delivering, or causing, &c. or for receiving or having in his keeping, or for concealing any such stores or goods so marked as aforesaid, in cases where the value is not above 20*s.*; and upon information within three calendar months shall cause the party accused to be apprehended and brought before him, or if he cannot be found may summon him by leaving such summons at his last or usual place of abode; and may also summon the witnesses on either side, and examine into the matter of fact, and on due proof, by confession, or the oath of one witness, shall give judgment accordingly, and may inflict a fine of 10*l.* upon him, one moiety whereof shall go to the informer, and the other moiety to the treasurer of the navy or ordnance, after first deducting the charges; to be levied by distress, which, if not redeemed within six days, may be sold, and for want of sufficient distress, such offender shall be committed to the common gaol for three calendar months, unless such fine be sooner paid: or, in lieu of such fine, the commissioner, &c. may cause such offender to be imprisoned and kept to hard labour in the house of correction for three calendar months, as such commissioner or justice shall think fit; and such commissioner or justice shall cause the moiety of such last-mentioned fine, and also the moiety of every sum arising from the sale of any barge or craft sold under the authority of this act, and paid into his hands as aforesaid, to be paid to the treasurer of the navy or ordnance, within thirty days after the expiration of the year in which such fine shall have been received; and in default such commissioner or justice shall forfeit 50*l.*, to be recovered with double costs in any of the courts at *Westminster*.

39 & 40 G. 3. c. 89.

tice may determine offences where the value of the stores does not exceed 20*s.*

§ 19. Such commissioner or justice may mitigate any such fine of 10*l.* so as not to reduce the same to less than one moiety over and above the costs.

Fines may be mitigated.

§ 20. And in case in lieu of such fine, such offender shall be imprisoned and kept to hard labour as aforesaid, then the informer shall have as a reward the sum of 5*l.*, which shall be paid by the treasurer of the navy or ordnance, upon such person producing a certificate, under the hand and seal of the commissioner or justice who convicted such offender, certifying the same, and the name of the person in his judgment entitled to such reward, which certificate such commissioner or justice is required to give without fee. No such summary proceeding shall be had before any justice, without the consent in writing of one of the principal officers or commissioners of the navy, &c.

If in lieu of a fine the offender be imprisoned, the informer to receive a reward of 5*l.*

§ 21. And if any person shall think himself aggrieved by any such judgment, concerning any stores under the value of 20*s.*, he may, upon entering into recognisance with one surety, to the amount of treble the value of the fine, appeal to the next sessions where the offence was committed, who may summon and examine witnesses upon oath, and finally hear and determine the same; and if such judgment shall be affirmed, such sessions may award the person so appealing to pay such costs as to them shall seem meet.

Appeal.

§ 22. And to prevent frivolous and vexatious appeals, the conviction may be drawn up in the following form, or to the like effect:

Conviction.

39 & 40 G.3. c.89.

BE it remembered, that on the ——— day of ———, in the year of our Lord ———, A. O. of ———, in the ——— of ———, was convicted before me ———, one of the commissioners of his majesty's ——— [or, one of his majesty's justices of the peace for the ——— of ———, as the case may be], for that the said A. O. on the ——— day of ——— now last past, at the ——— of ——— in the said ——— of ———, did, [here state the offence] contrary to the statute in such case made and provided. Given, &c.

Certiorari.

Which conviction shall be returned to the next sessions to be there filed, and shall not be removable by *certiorari* into any other court whatsoever.

Witnesses not appearing.

§ 23. And if any person summoned as a witness before such commissioner or justice shall neglect to appear at the time and place appointed, without reasonable excuse, he shall forfeit 10*l.*, to be recovered, levied, and applied in like manner as fines on summary convictions.

Not to prevent offenders being prosecuted as receivers of stolen goods.

§ 24. Provided always, that nothing herein giving a power of summary conviction shall prevent any person accused of selling or delivering, or having, or receiving, or concealing any such stores under stat. 9 & 10 *W.* 3. *c.* 41., 9 *G.* or 17 *G.* 2. *c.* 40. under the value of 20*s.* from being prosecuted as a receiver of stolen goods, so as the same person be not punished twice for the same offence.

Penalty for giving false certificates.

§ 26. And if any person shall give any false certificate, bill of parcels, or other instrument, purporting the identity, or the sale or disposal of any goods or stores as goods or stores so purchased of the said commissioners as aforesaid (§ 25.), or utter the same knowing it to be false, he shall on conviction forfeit 200*l.*, and shall be subject to further corporal punishment as is by this act directed with respect to persons having in their possession or concealing naval or ordnance stores; half to the king, and half with full costs to the informer.

Magistrates, &c. to have the protection afforded by stat. 24 G. 2. c. 44.

§ 28. Every commissioner, justice, and other person, acting in the execution of this act, shall have the same benefits as are given to justices and other peace officers by stat. 24 *G.* 2. *c.* 44. or any other act.

Persons giving false evidence.

§ 36. And if any person, upon his examination on oath, shall wilfully and corruptly give false evidence, he shall, on conviction, be adjudged guilty of wilful and corrupt perjury.

53 G. 3. c. 126. Extended to all stores having the marks usual to denote public stores.

By stat. 53 *G.* 3. *c.* 126., the 9 & 10 *W.* 3. *c.* 41. and all the penalties, provisions, &c. for the prevention of the embezzlement of any stores in the said act particularly described, and the punishment of persons offending therein, are extended to all public stores whatsoever, having thereon or therein the marks usually employed to denote the public stores, &c.

54 G. 3. c. 60. Provisions of 9 & 10 W. 3. c. 41. and 39 & 40 G. 3. c. 89. extended to cordage worked with worsted threads.

By stat. 54 *G.* 3. *c.* 60. The provisions, matters, and things, in respect to the making, selling, delivering, receiving, having in possession, and concealing any cordage wrought either with a white thread laid the contrary way, or with a twine laid to the contrary way, contained in stats. 9 & 10 *W.* 3. *c.* 41. and 39 & 40 *G* 3. *c.* 89. or in any other act or acts of parliament, shall extend to the making, selling, delivering, receiving, having in possession, and concealing any cordage wrought with one or more worsted threads, provided this shall not repeal any of the statutes now in force, in

respect to cordage wrought, either with a white thread laid the contrary way, or with a twine laid to the contrary way.

By stat. 54 *G.* 3. *c.* 159. § 10. All persons, except such as are duly licensed thereto by a commissioner of H. M.'s navy, are prohibited from *creeping* or *sweeping* for anchors, cables, ropes, rope yarns, or other stores, lost, or supposed to be lost, in harbours, &c. within certain prescribed limits, under a penalty of 10*l.*

54 G. 3. c. 159. Persons prohibited from sweeping harbours for lost stores.

Stat. 55 *G.* 3. *c.* 127. recites the several statutes from 9 & 10 *W.* 3. *c.* 41. to 53 *G.* 3. *c.* 126. (which last-mentioned act, by reason of divers omissions and imperfections, is repealed,) and enacts, that from thenceforth "not only the said recited acts of 9 & 10 *W.* 3. but also the several acts of 9 *G.* 1. *c.* 8., 17 *G.* 2. *c.* 40. and 39 & 40 *G.* 3. *c.* 89., so far as the same severally relate to H. M.'s naval, ordnance, and victualling stores therein respectively mentioned, and all the pains, penalties, forfeitures, regulations, restrictions, powers, provisions, clauses, matters, and things therein respectively contained, relating to H. M.'s naval, ordnance, and victualling stores therein respectively mentioned, shall extend and be construed to extend to *all public stores whatsoever* under the care, superintendence, or controul of any officer or persons in the service of H. M., his heirs or successors, or employed in any public department or office, either marked with *the marks or any of them,* in the said recited acts, or any of them specified, *or* with the broad arrow, and the letters B. O., *or* with a crown and the broad arrow, *or* with H. M.'s arms, *or* with the letters G. R. to denote the property of H. M. &c. therein, and to all and every person and persons not authorised by the proper officer or officers, person or persons, in H. M.'s service, in that behalf so to do, using any such marks, or making any goods marked with such marks, or any of them, and to all and every person and persons in whose custody, possession, or keeping any such public stores so marked as aforesaid shall be found, or who shall willingly or knowingly receive, or have in his, her, or their custody, possession, or keeping, or who shall conceal any such public stores so marked as aforesaid, unless such person or persons shall, upon his, her, or their trial produce a certificate, under the hand or hands of the proper officer or officers, person or persons, in H. M.'s service, authorised to grant the same, of such and the like nature as the certificate in the said recited acts of 9 & 10 *W.* 3. and 40 *G.* 3. mentioned; and to all and every person and persons who shall wilfully and fraudulently destroy, beat out, take out, cut out, deface, obliterate, or erase, wholly or in part, any of the said marks, or cause, procure, employ, or direct any other person or persons so to do, for the purpose of concealing the property of H. M. &c. therein, as fully and effectually, to all intents and purposes, as if all the same several pains, penalties, forfeitures, &c. in the said acts contained, so far as the same relate to H. M.'s naval, ordnance, and victualling stores, and the punishment of persons offending in manner therein mentioned, were herein severally repealed and re-enacted in respect to all other public stores whatsoever."

55 G. 3. c. 127. Recited acts of 9 & 10 W. 3. c. 41. 9 G. 1. c. 8. 17 G. 2. c. 40. and 39 & 40 G. 3. c. 89. so far as relate to naval stores, shall extend to all public stores, &c.

By stat. 56 *G.* 3. *c.* 80. it is enacted, "that from and after the passing of this act it shall and may be lawful to and for all and every, or any one of the principal officers and commissioners of H. M.'s navy, resident on any foreign station, to grant certificates

56 G. 3. c. 80. Principal officers and commissioners of the navy

56 G. 3. c. 80.

at foreign stations may grant certificates of stores sold by them.

under his or their respective hand or hands, for any such stores or goods which shall hereafter be sold by, or by the order of any such principal officer or commissioner, at any such foreign station, of such and the same, or the like tenor and effect, and that the same certificates so to be granted as aforesaid shall be in all places of such and the same force and effect as certificates under the hands of three or more of the principal officers and commissioners of the navy in *England* are of, for any such stores or goods sold by, or by the order of the said commissioners in *England*."

Under the statutes for protecting the king's stores, the king's mark denotes the original ownership; and there the *onus probandi* lies on the party to account satisfactorily for his possession according to the regulations prescribed, otherwise the bare fact of possession concludes him. 2 *East's P. C.* 765. But even here the presumption of the *malus animus*, arising from the bare fact of possession, may be rebutted by circumstances, as where a widow became possessed on the death of her husband of canvass stores, which had been purchased by him in his lifetime at a public sale, and had been many years made up into household furniture, but no evidence was given of any certificate of such sale being lawful as required by stat. 9 & 10 *W.* 3., or of any excuse allowed by the act; yet the possession being by act of law without fraud, *Foster* J. (*App.* 439. *edit.* 1792.) held it not within the penalty of the statute.

Corn.

I. The Measure of Corn. — Corn Rents.

Buying corn in the sheaf without measuring.

TO buy or sell corn in the sheaf, before it is threshed and measured, is against the common law of *England*; because by such sale the market is in effect forestalled. *Hadham*'s case, 3 *Inst.* 197.

22 C. 2. c. 8. *Winchester* measure.

Stat. 22 *C.* 2. *c.* 8. § 2, 3. against selling corn otherwise than by *Winchester* measure, are repealed by stat. 5 *G.* 4. *c.* 74. § 23. after 1st *May*, 1825. See stat. 5 *G.* 4. *c.* 74. § 15. 23. *tit.* Weights, &c.

Selling or buying corn without measuring.

And by stat. 22 & 23 *C.* 2. *c.* 12. § 2. Every person who shall *sell* or *buy* corn without measuring, being thereunto required, and that

without shaking of the measure by the buyer, shall forfeit all the corn so bought or sold, or the value thereof, to the party complaining. The following cases have been decided on stats. 22 *C.* 2. *c.* 8. and 22 & 23 *C.* 2. *c.* 12.

R. v. *J. Major*, 4 *T. R.* 750. This was a conviction on the above statutes for buying corn at *Newport* in the *Isle of Wight*, by a bushel different from the *Winchester* measure. It appeared that the corn was bought by the customary measure used in the *Isle of Wight*, which contains a pint more than the *Winchester* measure. The defendant was convicted in 40*s.* and 10*l.* 15*s.* being the value of the wheat sold. The court took time to consider, and afterwards Ld. *Kenyon* C. J. delivered the opinion of the court. This question depends on 22 C. 2. *c.* 8. and 22 & 23 *C.* 2. *c.* 12. The former imposes a penalty of 40*s.* on any person who shall sell corn or grain, usually sold by bushel, by any other bushel or measure than the *Winchester* measure; the latter recites the former act, and in order to inforce it, subjects both the buyer and seller to an accumulative penalty, the value of the corn sold. These acts are expressed in the most positive terms; and it was admitted in the argument that there was no subsequent law which directly repealed them. But several other statutes for the regulation of the corn trade were referred to, directing returns of the average price of corn to be made, and noticing in those returns a customary measure. These, it was argued, obliquely, though not directly, repealed the statutes of *C.* 2. We have considered this matter very fully, and are of opinion that the argument does not lead to that conclusion. We cannot get rid of those positive laws by a reference to subsequent statutes which were passed for another purpose, and which leave the former ones still in force. — Conviction affirmed.

It is illegal to sell corn by any other measure than the *Winchester* measure.

Also in *R.* v. *Arnold*, 5 *T. R.* 353. *Paley* 83., which was a conviction against a buyer of corn by a measure different from the *Winchester* measure. And as the conviction was affirmed, it is here given as a precedent: "*Be it remembered, that on the 5th day of* January, *in the year of our Lord* 1793, *at* Huntingdon, *in the said county of* Huntingdon, Robert Booth, *of* Huntingdon *aforesaid, in the said county, esquire, cometh before us* Lancelot Brown *and* Henry Poynter Stanley, *esquires, two of H. M.'s justices of the peace in and for the said county, and giveth us to understand and be informed that* Joseph Arnold, *of* Eton Socon, *in the county of* Bedford, *yeoman, after the 25th day of* March, *in the year of our Lord* 1670, *to wit, on the 20th day of* December, *in the year of our Lord* 1792, *at the parish of* St. Neots, *in the said county of* Huntingdon, *did unlawfully buy of and from one* William Peters a certain quantity of wheat containing divers, to wit, fifteen bushels, *in a different manner than by any bushel or measure agreeable to the standard marked in H. M.'s exchequer, commonly called the* Winchester *measure, containing eight gallons to the bushel, and no more or less, contrary to the form of the* statute *in that case made and provided; whereby and by force of the statute in that ease made and provided, the said* Joseph Arnold *hath incurred the several forfeitures and penalties thereunto annexed. And thereupon afterwards on the 12th day of* January, *in the said year of our Lord* 1793, *the said* Joseph Arnold, *being duly summoned to answer the charge aforesaid, personally appears for that purpose, at* Huntingdon *aforesaid, in the*

A conviction for buying a certain quantity of wheat, to wit, fifteen bushels of wheat (contrary to 22 & 23 C.2. c.12.) held sufficiently certain.

R. v. Arnold.

said county, before us the said justices, and having heard the said information, and being asked if he can say any thing for himself why he should not be convicted of the premises above charged upon him, the said Joseph Arnold *admits that he the said* Joseph, *on the 20th day of* December, *in the year of our Lord* 1792, *at the parish of* St. Neots *aforesaid, in the county aforesaid, did buy of the said* William Peters *the said quantity of wheat in the said information mentioned, at and for the price or sum of* 3l. 19s. 6d.*; but the said* Joseph Arnold *further says, that he is not guilty of the said offence charged upon him in and by the said information; and thereupon the said* Joseph Arnold *is asked by us the said justices if he has or can produce any evidence to show that he bought the said wheat by any bushel or measure agreeable to the standard marked in H. M.'s exchequer, commonly called the* Winchester *measure; but the said* Joseph *doth not offer any evidence touching the premises, nor doth he require any time for that purpose: Whereupon it appearing to us the said justices that the said* Joseph Arnold *is guilty of the premises charged upon him in and by the said information, therefore it is adjudged by us the said justices that the said* Joseph Arnold *is convicted, and he is hereby accordingly convicted by us of the offence charged upon him as aforesaid: And we do further adjudge that the said* Joseph Arnold *hath for his said offence forfeited the sum of* 3l. 19s. 6d., *being the value of the said wheat so bought by him as aforesaid, to be applied and distributed according to law: And we do also adjudge that the said* Joseph Arnold *hath forfeited for his said offence the further sum of* 40s., *to be applied and distributed according to law: And we do further adjudge that the said* Joseph Arnold *do forthwith pay to the said* Robert Booth *the sum of* 12s. *for the costs in and about the premises. In witness whereof we have to this record of conviction set our hands and seals at* Huntingdon *aforesaid in the said county, this 12th day of* January, *in the year of our Lord* 1793." — The objections to this conviction were, 1st, The defendant is convicted in 40*s*. besides the value of the corn, whereas he is only liable to the latter penalty inflicted by 22 & 23 *C.* 2. *c.* 12. The first act 22 *C.* 2. *c.* 8. only affects the *seller*. 2dly, The quantity of corn bought is not sufficiently ascertained, nor is any price fixed on it in the information. 3dly, The offence is charged to be contrary to the *statute*, whereas if the defendant be liable to both the penalties, it is contrary to *two statutes*. 4thly, The defendant is adjudged to pay costs, whereas none are given by the statute. — Ld. *Kenyon* C. J. In order to decide this case, we have only to look at the very words of the statute 22 & 23 *C.* 2., which expressly subjects the buyer to both the penalties; for it is thereby enacted that the buyer shall forfeit and lose, besides the penalty of the former act, all corn bought, &c.; that is, he is to forfeit the value of the corn in addition to the penalty of 40*s*. imposed by the former act. Nor is there any objection in saying that this forfeiture is an offence against the form of the *statute*; for all that respects the buyer is prohibited by 22 & 23 *C.* 2. On reading over the case at first, I thought that the objection intended to be taken was, that the evidence did not support the charge: but I observe that the proof of buying according to the regulations of the statute is (by § 3. see *post*) thrown on the defendant. — *Ashhurst* J. concurred. — *Buller* J. The statute 22 & 23 *C.* 2.

c. 12., instead of saying expressly that the buyer should be liable to the penalty of 40*s.* and to a forfeiture of the corn so bought, has said the same thing impliedly; for it says that he shall forfeit and lose, besides the penalty of the former act (which is a penalty of 40*s.*) the corn so bought, &c. With regard to the objection, that the quantity is not sufficiently ascertained, an information before the magistrates need not be more particular than an information filed in this court; and in the latter case an allegation that the defendant "bought a certain quantity of wheat, containing, to wit, fifteen bushels," would be sufficiently certain; and here the evidence has particularised it. *Per cur.* Conviction affirmed.

R. v. Arnold.

And by stat. 22 & 23 *C.* 2. *c.* 12. § 3. On complaint made to a justice of the peace that corn hath been bought, sold, or delivered contrary to this act, the proof shall lie upon the defendant, to make it appear by the oath of one or more credible witnesses that he sold or bought the same lawfully: wherein if he shall fail, he shall forfeit as is said before, to be levied by distress and sale; which shall by the justice be distributed, half to the poor, and half to the informer.

22 & 23 C. 2. c. 12. Proof to lie on the owner.

Distribution of the penalty.

By stat. 1 & 2 *G.* 4. *c.* 87. (for regulating the importation and exportation of corn, grain, meal, and flour into and from *G. B.*) it is enacted, § 37. That the bushel by which all corn shall be measured and computed, in pursuance of the directions of this act, shall be the *Winchester* bushel, and a quarter shall be deemed to consist of eight such bushels; and the said justices of the peace for each county, riding, and division, and the mayor or other chief officer of the cities or towns, which are counties of themselves, or have or enjoy exempt or peculiar jurisdiction, shall cause a standard *Winchester* bushel to be provided and kept in each city and town, from which any returns of the prices of corn are by this act directed to be made; and all computations by measure, to be made for the purposes of this act, be made by the stricken and not by the heaped bushel; and in all cases where corn shall be sold by weight, fifty-seven pounds avoirdupoise of wheat shall be deemed equal to every such *Winchester* bushel of wheat, and fifty-five avoirdupoise pounds of rye shall be deemed equal to every such bushel of rye, and forty nine avoirdupoise pounds of barley shall be deemed equal to every such bushel of barley, and forty-two avoirdupoise pounds of bear or bigg shall be deemed equal to every such bushel of bear or bigg, and thirty-eight avoirdupoise pounds of oats shall be deemed equal to every such bushel of oats. See stat. 5 *G.* 4. *c*, 74. *tit.* Weights, &c. Vol. V.

1 & 2 G. 4. c. 87. All corn to be measured by the *Winchester* bushel.

§ 39. "Every inspector of corn returns shall and he is hereby authorised and required to make a comparison between the *Winchester* measure and the measure or measures commonly used in the city or town for which he is appointed inspector; and within one month after his appointment to cause a statement in writing of such comparison to be hung up in some conspicuous place in the market and town hall of such city or town, and from time to time renew the same, if it shall become defaced or illegible, and shall return a copy of the same to the receiver of corn returns.

Inspectors to transmit comparison of measures.

§ 40. "Nothing in this act contained shall extend to alter the present practice of measuring corn, or any of the articles aforesaid, to be shipped from or to be landed in the port of *London*,

Present mann of measuring corn, &c. in

1 & 2 G. 4. c. 87.

London to continue.

but the same shall be measured by the sworn meters appointed for that purpose, by whose certificate the searchers or other proper officers of H. M.'s customs are hereby empowered and required to certify the quantity of corn or other articles as aforesaid so shipped or landed; and nothing in this act contained shall extend to lessen or take away the tolls or duties due and payable to the mayor, commonalty, and citizens of the city of *London*, or to the mayor of the said city for the time being."

5 G. 4. c. 74

Corn Rent.

As to the mode of ascertaining rents, &c., payable in grain, malt, or other commodity, in England and Ireland. See stat. 5 *G.* 4. *c.* 74. § 17, 18. *tit.* Weights, &c. Vol. V.

II. Cutting Corn growing, or burning Stacks of Corn.

43 Eliz. c. 7.

Cutting corn growing.

By stat. 43 *Eliz. c.* 7. § 1 & 2. Every person who shall unlawfully cut or take away any corn or grain growing, being convicted thereof by confession, or oath of one witness before one justice, shall for the first offence pay such damages as the justice shall appoint; and if the justice shall think him not able or sufficient, or if he do not pay such damages, he shall commit him to the constable where the offence is committed, or where the party is apprehended, there to be whipped; and for every other offence he shall in like manner be whipped. The constable refusing shall be committed by the justice till he conform.

But if he cut it at one time, and then come again at another time and take it away, it is felony. 1 *Haw. c.* 33. § 21.

22 & 23 C. 2. c. 7.

Burning corn in the night.

By stat. 22 & 23 *C.* 2. *c.* 7. § 2. 4. 6. If any person shall in the night-time maliciously and wilfully burn or cause to be burned any rick or stack of corn, he shall be guilty of felony: but to avoid judgment of death, or execution thereupon, he may make his election to be transported for seven years. And three justices (1 Q.) may determine the same.

Burning by night or day.

But by stat. 9 *G.* 1. *c.* 22. § 1. commonly called the Black Act, If any person shall set fire to any hovel, cock, mow, or stack of corn, he shall be guilty of felony without benefit of clergy.

And the hundred shall answer the damages, not exceeding 200*l.* § 7, 8, 9, 10. Vide *ante, tit.* Black Act. p. 362.

§ 12. If any person shall apprehend, or cause to be convicted, such offender, and shall be killed or wounded, so as to lose an eye, or the use of any limb, in apprehending or endeavouring to apprehend such offender, on proof thereof at the sessions, and certificate thereof from thence, the sheriff shall pay to the person entitled the sum of 50*l.* in thirty days, to be repaid to him out of the treasury.

III. Ascertaining the Price of Grain, for regulating the Importation and Exportation, &c.

[54 G. 3. c. 69.—55 G. 3. c. 26.—1 & 2 G. 4. c. 87. — 3 G. 4. c. 60. 5 G. 4. c. 70.]

1 & 2 G. 4. c. 87.

Stat. 1 & 2 *G.* 4. *c.* 87. intituled "*An act to repeal certain acts, passed in the thirty-first, thirty-third, forty-fourth, and forty-fifth years of his late majesty king* George *the third, for regulating the importation and exportation of corn, grain, meal, and flour into and from* Great Britain, *and to make further provisions in lieu thereof.*" [Passed 10th *July*, 1821.]

§ 1. After reciting stats. 31 *G.* 3. *c.* 30. — 33 *G.* 3. *c.* 65. — 44 *G.* 3. *c.* 109. and 45 *G.* 3. *c.* 86. it is enacted, "that the said acts shall be repealed: provided that all acts or parts of acts, which shall have been repealed by virtue of any of the above-recited acts, shall still be deemed and taken to be and remain repealed."

1 & 2 G. 4. c. 87. Recited acts repealed.

§ 2. Enacts, "that from and after the passing of this act, no corn ground, except wheat meal, wheat flour, and oat meal, nor any malt, shall be imported into *G. B.* from parts beyond the seas, under penalty of the forfeiture thereof, together with the ship or vessel in which the same shall be imported, with her guns, furniture, ammunition, tackle, and apparel, and the same shall and may be seized by any officer or officers of the customs."

No corn ground except wheat meal, wheat flour, oatmeal, nor any malt, to be imported.

§ 3. Whereas it is expedient to make provision for ascertaining the price of *British* corn, according to which the importation into the U. K. of corn, meal, or flour, the growth, produce, or manufacture of any foreign country, for the purpose of home consumption, shall be regulated and governed; it is enacted, "that weekly returns of purchases and sales of such corn shall be made in the manner hereinafter directed, in the following cities and towns of *England* and *Wales*; that is to say, in

Appointments of towns for making return.

London, Chelmsford, Colchester, Romford, Maidstone, Canterbury, Dartford, Chichester, Lewes, Rye, Ipswich, Woodbridge, Sudbury, Hadleigh, Stowmarket, Bury-Saint-Edmunds, Beccles, Bungay, Lowestoft, Cambridge, Ely, Wisbeach, Norwich, Yarmouth, Lynn, Thetford, Watton, Diss, East Dereham, Harleston, Holt, Aylesham, Fakenham, Northwalsham, Lincoln, Gainsborough, Glanfordbridge,

Lowth, Boston, Sleaford, Stamford, Spalding, York, Bridlington, Beverley, Howden, Hull, Whitby, New Malton, Durham, Stockton, Darlington, Sunderland, Barnard Castle, Walsingham, Belford, Hexham, Newcastle-upon-Tyne, Morpeth, Alnwick, Berwick-upon-Tweed, Carlisle, Whitehaven, Cockermouth, Penrith, Appleby, Kirkby-in-Kendal, Liverpool, Ulverton, Lancaster, Preston, Wigan, Warrington,

Manchester, Bolton, Chester, Nantwich, Middlewick, Four-Lane-Ends, Holywell, Mold, Denbigh, Wrexham, Llanrwst, Ruthin, Beaumaris, Llannerchymed, Amlwk, Carnarvon, Pwhelli, Conway, Bala, Corwen, Dolgelly, Cardigan, Lampeter, Aberystwith, Pembroke, Fishguard, Haverfordwest, Carmarthen, Llandilo, Kidwelly, Swansea, Neath, Cowbridge, Gloucester, Cirencester, Tetbury, Stow-on-the Wold, Tewkesbury,

Bristol, Taunton, Wells, Bridgewater, Frome, Chard, Monmouth, Abergavenny, Chepstow, Pontypool, Exeter, Barnstaple, Plymouth, Totness, Tavistock, Kingsbridge, Truro, Bodmin, Launceston, Redruth, Helstone, Saint Austell, Blandford, Bridport, Dorchester, Sherborne, Shaston, Wareham, Winchester, Andover, Basingstoke, Fareham, Havant, Newport, Ringwood, Southampton, and Portsmouth.

1 & 2 G. 4. c. 87.

And, for the purpose of duly collecting and transmitting such weekly returns, there shall be appointed in each of the said cities and towns, in manner hereinafter directed, a fit and proper person to be inspector of corn returns."

Power to alter, add to, or omit towns which are to make returns.

§ 30. "If any justices of the peace in any of the counties, ridings, or divisions, in which any of the cities or towns mentioned in this act are situated, shall think it necessary or expedient that any alterations should be made in the list of cities and towns hereinbefore specified, from which returns of the prices of *British* corn are to be made, or that any such city or town should be struck out of the said lists, or that any other city or town should be inserted in lieu thereof, or in addition thereto, and shall direct a representation to be made to H. M. for the above purpose, it shall be lawful for H. M. in council to direct such alteration, addition, or omission to be made accordingly: provided nevertheless, that no such city or town shall be added to the said list, unless the same be situated in some county, riding, or division, in which one or more of the cities or towns mentioned in this act are situated."

Appointment of receiver of corn returns.

§ 4. "The lords of the committee of privy council appointed for the consideration of all matters relating to trade and foreign plantations, shall from time to time appoint a fit and proper person, to be called '*receiver of corn returns*,' to whom the said inspectors shall transmit such returns of the prices of *British* corn, in manner hereinafter directed, with such salary and allowances as shall be deemed by the said committee to be a just and reasonable compensation for his time and labour in executing the said office; and the said receiver shall, and he is hereby authorised and required to obey such instructions, with respect to the due execution of the laws relating to the trade in corn, as he shall from time to time receive from the lords of the said committee."

In case any town shall be added to the list in this act, justices, &c. to appoint an inspector.

§ 31. "In case any city or town shall be added to the list contained in this act, from which returns of corn are to be made, the justices of the peace for the county, riding, or division in which such city or town shall be situated, or the mayor or other chief officer thereof, if such city or town shall have or enjoy an exempt jurisdiction, shall and they are hereby authorised and required forthwith to appoint an inspector of corn returns for such city or town, in like manner as is required by this act, with respect to the appointment of inspectors of the other cities and towns named in this act."

§ 5. "Such receiver of corn returns, before he enters on the execution of his office, shall take the following oath; *videlicet*,

Receiver's oath.

I A. B. *do swear, that I will, to the best of my skill and knowledge, execute the office of receiver of corn returns, according to the directions of an act passed in the second year of the reign of his majesty king* George *the fourth, intituled* [here set forth the title of this act], *and in all things conform myself, as receiver of corn returns, to the provisions of the said act;*

Ante, p. 758.

which oath any justice of the peace for the county of *Middlesex* is hereby empowered and required to administer."

Receiver to receive packets free of postage.

§ 6. "It shall be lawful for the said receiver of corn returns to send by the post, to any part of the U. K., any papers relating to the business of this act, which shall be signed by him on the out-

side thereof, free from the duty of postage; and to receive all his letters and packets from the inspectors, appointed by virtue of this act, and from the clerks of the peace in the several counties of *England* and *Wales*, and from the collectors and other chief officers of the customs, at the respective ports of the U. K., and from the mayors or other chief officers of the cities and towns within named or to be named as aforesaid, on the business in which he is employed, in pursuance of the directions of this act, free from the duty of postage, such letters and packets so sent or received, being certified on the outside thereof to be on the business of this act; and it shall and may be lawful for H. M.'s postmasters general, his secretary, or other officer especially authorized by him, to examine and search all such letters and packets, and to charge with treble postage any letter or paper therein contained contrary to the provisions of this act."

1 & 2 G. 4. c. 87

§ 7. Enacts, "that the inspector of corn returns for the city of *London* shall be appointed in the manner hereinafter directed; that is to say, the several proprietors of the corn exchange in *Mark-lane* shall and they are hereby authorised and required to meet, and under their hands and seals nominate and appoint a fit and proper person (not being a corn factor, merchant, clerk, agent, or other person, buying corn for sale, or for the sale of malt, meal, or flour, made thereof,) to be inspector of corn returns, and so from time to time within twenty-eight days after the death, removal, or resignation of any such inspector, to nominate and appoint some other fit and proper person as aforesaid to be inspector of corn returns; and every such inspector shall, and he is hereby required, within one week after he has received his appointment, to deliver the same to the lord mayor, or one of the aldermen of the said city, and then enter into a bond to the lord mayor of the city of *London*, with two sufficient sureties, to be approved of by the lord mayor or the said alderman, in the sum of 200*l.*, for the faithful accounting for and payment of all monies that shall come to his hands, by virtue of this act; and he shall at the same time take the following oath; which oath the said lord mayor or one of the said aldermen is hereby authorised and empowered to administer:

Appointment of *London* inspector.

Inspector to take the following oath.

I A. B. *do swear, that I will at all times make due and true returns to the receiver of corn returns, appointed by virtue of an act passed in the second year of the reign of king* George *the fourth, intituled* [here set forth the title of this act], *and in all things, to the best of my skill and judgment, conform myself as inspector of corn returns to the directions of the said act.*

Ante, p. 758.

And the said appointment, and also a certificate of his having taken such oath, shall be delivered by the lord mayor or the said alderman, at the next session of the peace for the said city, and shall be then and there enrolled; and the said proprietors, or the major part of them as aforesaid, shall, and they are hereby required from time to time to provide, out of the monies arising from the estates belonging to them as proprietors of the *Corn Exchange*, a proper and convenient office, either within the *Corn Exchange*, or as near thereunto as may be, for the use and accommodation of the said inspector of corn returns, wherein all books, papers, and returns belonging to such inspector shall be deposited, and over

1 & 2 G. 4. c. 87. which shall be written in legible characters, '*Office of inspector of corn returns*."

In case of neglect to appoint inspector as above directed, the lord mayor, &c. empowered so to do.

§ 8. Enacts, "that in case the said proprietors, or the major part of them as aforesaid, shall refuse or neglect, within the respective times hereinbefore mentioned, to nominate and appoint a fit and proper person to be inspector of corn returns, it shall and may be lawful for the lord mayor and aldermen of the said city, and they are hereby required, at the sessions of the peace that shall next immediately be held after such neglect or refusal as aforesaid, or at an adjournment of the same, to be held within one week thereafter for that purpose, or at some subsequent sessions, to nominate and appoint a fit and proper person (not being a miller, maltster, corn factor, merchant, clerk, agent, or other person, buying corn for sale, or for the sale of meal, flour, or malt, made thereof,) to be inspector of corn returns; which appointment shall be then and there enrolled, and the person so appointed shall then take the oath before directed, and a certificate of his having taken such oath shall then and there be enrolled, and he shall, within three days at least after such appointment, give bond in the manner and form before required."

Power to remove London inspector.

§ 9. "No person who shall have been appointed as aforesaid to the said office of inspector of corn returns shall be removable therefrom, except on complaint of misbehaviour, or neglect of duty in his office, made at the sessions of the peace holden for the said city, and then and there heard and adjudged, in which case it shall and may be lawful for the lord mayor and aldermen, if they shall see good cause for the same, to remove such person from his office, and they shall thereupon signify such removal to the secretary of the *Corn Exchange* for the time being, or to some one of the proprietors of the same as aforesaid, who shall forthwith proceed to nominate and appoint a new inspector in manner hereinbefore directed."

In case of inspector being disabled by sickness, a deputy may be appointed.

§ 10. "In case any inspector of corn returns shall be disabled by sickness for the space of one week to execute the duties of his office, and the same shall be signified to the secretary of the *Corn Exchange*, or any one of the proprietors thereof as aforesaid, it shall be lawful for the said proprietors, or the major part of them, and, in case of their neglect or refusal, for the lord mayor of the said city, and he or they is and are hereby required in like manner to nominate and appoint a fit and proper person (not being a miller, maltster, corn factor, merchant, clerk, agent, or other person buying corn for sale, or for the sale of meal, flour, or malt made thereof) to be deputy, and to execute the office of inspector during the disability of such inspector by sickness, and no longer; which appointment shall in like manner be enrolled, and the deputy so appointed shall in like manner enter into a bond and take the oath, and a certificate of his having so taken the oath shall in like manner be enrolled, as is hereinbefore directed with regard to the inspector of corn returns."

Corn factors in London to make a declaration.

§ 11. Every corn factor carrying on his trade or business in the city of *London*, or in the suburbs thereof, shall, within one month after this act shall have been in force, make a declaration in the form following: that is to say,

I A. B. do hereby declare, that the returns of the quantities and prices of British *corn, which henceforward shall be by or for me sold and delivered, shall, to the best of my knowledge and belief, contain the whole quantity, and no more, of the corn* bonâ fide *sold and delivered by or for me within the period to which they shall refer, with the prices of such corn, and the names of the buyers respectively, and of the persons for whom such corn shall have been sold by me respectively, and to the best of my judgment conformable to the directions of an act passed in the second year of the reign of king* George *the fourth, intituled* [here set forth the title of this act.]

1 & 2 G.4. c.87.

Ante, p.758.

Which declaration shall be in writing, and shall be subscribed with the hand of such corn factor, and shall be by him or his agent forthwith delivered to the lord mayor of the city of *London* for the time being, who is hereby required to grant a certificate thereof, to be registered by the inspector of corn returns; and in case any person shall carry on the trade or business of a corn factor, without making the said declaration, agreeably to the directions of this act, every such person shall forfeit and pay the sum of 50*l.*"

Penalty 50*l.*

§ 12. "Every such corn factor shall, and he is hereby required to return or cause to be returned on the *Wednesday* in each and every week, to the said inspector of corn returns, an account in writing, signed with his own name or the name of his known agent, of the quantities of each respective sort of *British* corn so by him sold and delivered during the week, with the prices thereof, the amount of every parcel, with the total quantity and value of each sort of corn, and by what measure or weight the same was sold, with the names of the buyers thereof; and of the persons for whom such corn shall have been sold by him respectively, in default whereof every such corn factor shall for every such neglect forfeit and pay the sum of 10*l.*"

Corn factors in London to make returns.

Penalty 10*l.*

§ 13. "The said inspector of corn returns shall duly and regularly enter in a book or books, to be provided and kept for that purpose, the several accounts of the quantities and prices of such corn received by him from the respective corn factors, and shall transmit a copy thereof weekly to the said receiver of corn returns."

Inspector to enter corn factors' returns in a book.

§ 14. "The justices of the peace for the several and respective counties, ridings, or divisions thereof, in which the several cities and towns, from which returns of the prices of corn shall be required by virtue of this act, are situated (the city of *London* excepted), shall and they are hereby authorised and required at the next quarter sessions held nearest to each said market town after the passing of this act to appoint such person as to them shall appear best qualified for that purpose, within their respective jurisdictions, (not being a miller, maltster, factor, merchant, clerk, agent, or other person burying corn for sale, or for the sale of meal, flour, malt, or bread made thereof,) residing within or near each and every of the said cities or towns, except such cities or towns as are counties of themselves, or as have or enjoy an exempt jurisdiction, and which do not contribute to the rate of the county, riding, or division in which they are situated; to collect weekly an account of the prices and quantities of the several sorts of *British* corn sold and delivered in such city or town; and the person so to be appointed shall be called inspector of corn returns for such city

Appointment of country inspectors.

1 & 2 G. 4. c. 87. or town; and the said justices shall, and they are hereby authorised and required, in the same manner from time to time, upon the death, removal, or resignation of any such inspector, at their next ensuing sessions of the peace, or at some subsequent sessions, to appoint some other fit and proper person as aforesaid, to be inspector of corn returns for such city or town."

Appointment of country inspectors for counties of themselves.

§ 15. Enacts, "that the mayor or other chief officer, and the justices of the peace of every such city or town as is a county of itself, or has or enjoys an exempt jurisdiction, and which doth not contribute to the rate of the county, riding, or division in which it is situated (the city of *London* excepted), shall, and they are hereby authorised and required, at the general quarter sessions of such city or town respectively, or at any adjournment thereof, in like manner to appoint such person as to them shall appear best qualified for that purpose, (not being a miller, maltster, factor, merchant, clerk, agent, or other person buying corn for sale, or for the sale of meal, flour, malt, or bread made thereof,) residing within or near such city or town, to collect weekly an account of the prices and quantities of the several sorts of *British* corn sold and delivered in such city or town; and the person so to be appointed shall be called inspector of corn returns for such city or town; and the said mayor or other chief officer and justices shall, and they are hereby authorised and required, in the same manner from time to time, upon the death, removal, or resignation of any such inspector, to appoint some other fit and proper person as aforesaid to be inspector of corn returns for such city or town."

Power to remove country inspectors.

§ 16. Enacts, "that the said justices of the peace, and the said mayor or other chief magistrate and justices of the peace of every such city or town before mentioned as is a county of itself, or has or enjoys an exempt jurisdiction as aforesaid, shall, at their respective quarter sessions, or at any adjournment thereof, have power to remove any inspector, appointed as aforesaid, for misbehaviour or neglect of duty, on complaint being made before them, on oath, of such misbehaviour or neglect of duty, by any one credible witness, which oath such justices and mayor or other chief officer are and is hereby authorised to administer, or on like complaint made in writing, and signed by the said receiver of corn returns to be appointed by virtue of this act: provided always, that in case the death or resignation of any such inspector shall happen at any time previous to the holding such quarter sessions, it shall be lawful for two justices of the peace acting for such county, riding, or division, or for the mayor or other chief officer of such city or town as is a county of itself, or has or enjoys an exempt jurisdiction as aforesaid, to appoint some other fit and proper person as aforesaid in the place of such inspector so dying or resigning; which person shall execute the office of inspector of corn returns until the next general quarter sessions of the peace."

Oath of country inspectors.

§ 17. "Every person so appointed inspector of corn returns as aforesaid, shall, previous to his taking upon him the said office, take and subscribe, before any one justice of the peace for the county, riding, division, city, or town where he shall reside, the following oath, (or being of the people called *Quakers*, affirm,) which oath or affirmation such justice is hereby authorised and required to administer; *videlicet*,

I A. B. do swear [or, *affirm*], *that I will at all times make due and true returns to the receiver of corn returns, appointed by virtue of an act passed in the second year of the reign of king* George *the fourth, intituled* [here set forth the title of this act], *of the weekly quantities and prices of* British *corn in the* [*city* or *town*] *of* ———, *according to the accounts delivered to me by the several dealers in corn in the said city or town; and that I will use my best endeavours to procure true accounts of such quantities and prices from such dealers; and in all things, to the best of my skill and judgment, conform myself, as inspector of corn returns, to the directions of the said act.*"

1 & 2 G. 4. c. 87.

Ante, p. 758.

Country dealers in corn to make returns.

§ 18. "As soon as inspectors of corn returns shall have been appointed in manner hereinbefore mentioned, all millers, maltsters, factors, merchants, clerks, agents, and other persons, being dealers in corn for sale, or for the sale of meal, flour, malt, or bread made thereof, shall and they are hereby required to return, or cause to be returned, to the said inspector of corn returns for the city or town whereat they shall respectively buy any corn, an account in writing, signed with their own name, of the amount of each and every parcel of each respective sort of *British* corn, and the price thereof, and by what weight or measure the same was so bought by them during the week, on the first market day in the week then next ensuing, and the names of the sellers of each of the said parcels respectively; and in case of any such parcels of corn being bought or sold by any miller, maltster, factor, merchant, clerk, agent, or person being a dealer for or on account of any other person, then the names of such other persons, and also of the buyers thereof; in default whereof, every such miller, maltster, factor, merchant, clerk, agent, or other person, being a dealer in corn as aforesaid, shall for every such neglect forfeit and pay a sum not exceeding 10*l.* nor less than 40*s.*"

§ 19. "Every miller, maltster, factor, merchant, clerk, agent, or other person, being a dealer in corn for sale, or for the sale of meal, flour, malt, or bread made thereof, shall, within one calendar month from the time he shall begin to deal in corn in any city or town before mentioned, make declaration in the form following:

Countrydealer's declaration.

I A. B. do hereby declare, that the returns of the quantities and prices of British *corn, which henceforward shall be bought by me, together with the names of the persons from whom I shall make such purchases, shall, to the best of my knowledge and belief, be true and just, and to the best of my judgment conformable to the directions of an act passed in the second year of the reign of his majesty king* George *the fourth, intituled* [here set forth the title of this act].

Ante, p. 758.

Which declaration shall be in writing, and shall be subscribed with the hand of such miller, maltster, factor, merchant, clerk, agent, or other person, being a dealer in corn for sale, or for the sale of meal, flour, malt, or bread made thereof, and shall be by them, or their agents respectively, forthwith delivered to the chief magistrate of each such city or town, or to the nearest justice of the peace for the respective county, riding, division, city, or town, who are hereby required to certify the same to, and such certificate is hereby required to be filed by the clerk of the peace for the

1 & 2 G. 4. c. 87. county, riding, or division, or by the town clerk of such city or town respectively, who are also hereby required to notify the same to the receiver of corn returns in *London*; and in case any person shall buy corn of any sort for sale as aforesaid, without having made the said declaration, or shall wilfully make a false return of the quantities and prices, such person shall, for every such neglect and for every such false return, forfeit and pay a sum not exceeding 10*l.* nor less than 40*s.*"

Penalty.

Inspectors to enter returns in a book.

§ 20. "Every such inspector shall duly and regularly enter in a book to be provided and kept for that purpose, the several accounts of the quantities and prices of corn returned to him by the respective dealers as aforesaid; and every such inspector shall return to the receiver of corn returns, appointed by virtue of this act, on the *Tuesday* in each week, an account of the weekly quantities and prices of the several sorts of *British* corn sold in the city or town for which he is appointed inspector, according to the returns so made to him as aforesaid, in such form and according to such directions as he shall from time to time receive from the receiver of corn returns, on pain of forfeiting for every such neglect the sum of 10*l.*; which account shall be lodged with and remain in the custody of the said receiver of corn returns, for the purposes of this act."

Putting up returns in market place.

§ 21. "Each and every inspector of corn returns shall, and he is hereby required, on each and every market day to put up, or cause to be put up in the market place of the city or town for which he shall be appointed inspector (or if there shall be no market place in such city or town, in some other conspicuous place therein,) a copy of the last return made by him to the receiver of corn returns in *London*, omitting the names of the parties who may have sold the said corn or grain; and each and every such inspector shall also again put up such account on the market day immediately following that on which it shall first have been put up, in case the same shall from accident or other cause have been removed, and shall take due care that the same shall remain up for public inspection, until a new account for the ensuing week shall have been prepared and put up."

Inspection of books.

§ 22. "The said inspectors, as well in *London* as in all other cities and towns in which, by virtue of this act, inspectors may be appointed, shall and may, upon application made to them to that effect, allow the entries made in such book to be inspected, subject to such regulations and directions as the said inspectors may from time to time receive from the receiver of corn returns, under the authority of the lords of the committee of privy council appointed for the consideration of all matters relating to trade and foreign plantations; provided, however, that the person so applying shall be permitted only to examine the entry of any return of *British* corn bought or sold, which he shall himself have either bought or sold."

Inspectors and others acting under former acts to continue to discharge their duties till other appointments are made.

§ 23. "And whereas a certain time must necessarily be required after the passing of this act for the purpose of selecting and appointing the inspectors or other officers to be appointed by virtue of this act; be it therefore enacted, that all inspectors or other persons who at the passing of this act shall hold appointments and discharge any duties required of them by the laws in force previous to the passing of this act, shall, and they are hereby authorised and required to proceed forthwith to discharge the duties required

of them by this act, in the same manner as if they had been appointed under the provisions of this act, and shall receive the remuneration granted by this act to the inspectors of corn returns, until new appointments shall have been made in the manner required by this act."

1 & 2 G. 4. c. 87.

Receiver to enter returns in a book.

§ 24. Enacts, "that the said receiver of corn returns shall and he is hereby required, at the end of every week, to make up from the returns received by him in the week immediately preceding, in pursuance of the directions of this act, an account of the total quantities and prices of each respective sort of *British* corn, of the sales of which returns shall have been made to him by the said inspectors of corn returns; and the said receiver is hereby required to enter the same in a book, and to publish the said accounts every week in the *London Gazette*, in such form and manner as shall be directed by the lords of the committee of privy council, appointed for the consideration of all matters relating to trade and foreign plantations."

Mode of computing aggregate averages to govern import-a

§ 25. And whereas by stat. 55 *G.* 3. *c.* 26. § 5. certain provisions were made for regulating the price at which foreign corn, meal, and flour should thereafter be permitted to be imported into the U. K., or be taken out of the warehouse for home consumption; it is enacted, that the average prices of all *British* corn, by which the importation of foreign corn, meal, or flour for home consumption shall in future be regulated, shall be made up and computed at four quarterly periods in each and every year, in manner following, (that is to say,) the said receiver of corn returns shall within seven days after the 15th of *February*, the 15th of *May*, the 15th of *August*, and the 15th of *November* in each year, add together the total quantities of each sort of *British* corn, and also the total prices for which the same were sold, as shall appear from the returns received by the said receiver of corn returns in the six last weeks immediately preceding the said 15th of *February*, 15th of *May*, 15th of *August*, and 15th of *November* in each year, and shall divide the said total prices by the said total quantities of each respective sort of corn, and the sum produced hereby shall be deemed and taken to be the aggregate average price of each such sort of corn, in and for the six weeks immediately preceding the before mentioned periods respectively, by which the importation of foreign corn, meal, and flour for home consumption, or the taking out the same from the warehouse for home consumption, shall be governed and regulated in the U. K.

Publishing aggregate average prices in the Gazette, &c.

§ 26. The said receiver of corn returns shall enter the said accounts of the aggregate average prices of each sort of *British* corn in a book, as soon as he shall have made up and computed the same in the manner hereinbefore directed, and shall at the same time cause the same to be published in the *London Gazette*, and shall transmit a certificate thereof to the collector or other chief officer of the customs, at each of the several ports in *G. B.* and to the commissioners of customs in *Ireland*, who are hereby required forthwith to transmit copies thereof to the collectors or other chief officers of the customs in the several ports in *Ireland*; and the importation of each sort of foreign corn, meal, and flour for home consumption, in the U. K., and the taking the same out of warehouse for the purpose of being so consumed, shall be governed and regulated by the said aggregate average prices, until new average prices shall, under the provisions of the

1 & 2 G.4. c.87. said recited act of the 55 G. 3., or under the provisions of this act, be made up and computed, and a certificate thereof be received by such collectors or other chief officers.

Ports of Isle of Man, to be shut and opened at same time with English ports.

§ 27. "Whenever the ports of the U. K. shall be shut against the importation of foreign corn, meal, or flour for home consumption, the ports in the *Isle of Man*, [(a) and in the islands of *Guernsey, Jersey, Alderney*, and *Sark*,] shall in like manner be shut against the importation of such foreign corn, meal, or flour for home consumption; and whenever any such foreign corn, meal, or flour shall be permitted to be imported into the ports of the U. K. for home consumption, foreign corn, meal, or flour, may in like manner be imported into the ports of the *Isle of Man*, [(a) and of the islands of *Guernsey, Jersey, Alderney*, and *Sark*,] for home consumption."

Receiver of corn returns in London shall four times a year transmit a certificate of the average prices to the collectors of customs, by which importation shall be regulated.

§ 28. "And in order that due notice may be given of the opening or shutting of the ports of the U. K., for the purposes above stated, it is enacted, that the receiver of corn returns in *London* shall, and he is hereby required within seven days after the 15th day of *November*, the 15th day of *February*, the 15th day of *May*, and the 15th day of *August* in each and every year, transmit to the collectors or chief officers of the customs in the ports of the said islands respectively, a certificate of the average prices of *British* corn, made up and computed in the manner hereinbefore required; and such collector or other chief officer shall cause the same to be put up in some conspicuous place in the custom-house; and the importation of foreign corn, meal, and flour into the ports of the said islands shall be governed and regulated by such average prices, until new average prices shall in like manner be made up and transmitted to such collectors or other chief officers, and be by them received."

No account of sales to be received, unless on proof that the dealer has previously made the declaration.

§ 29. Enacts, "that the inspectors appointed for the several cities and towns named or to be named by virtue of this act, shall not admit into the returns to be by them made to the receiver of corn returns in *London*, of the quantities and value of corn sold in the said cities and towns respectively, any account of sales or purchases of corn which shall be tendered to them by the dealers or other persons required by law to deliver in such accounts, unless such inspectors shall respectively have received satisfactory proof that the person or persons tendering such account shall have made the declaration required by law, at least one calendar month previous to the sale or purchase referred to in such accounts."

Returns from two thirds of the towns to be sufficient.

§ 32. "If the returns conformable to the directions of this act shall be made to the receiver of corn returns from not less than two thirds of the cities and towns from which such returns are required to be made, such number of returns made conformable to the directions of this act shall be deemed to be sufficient for forming the aggregate average prices by such receiver of corn returns, for the purpose of governing and regulating the importation of foreign corn, meal, and flour, or the taking of the same out of warehouse for home consumption in the U. K."

British corn brought into the river Thames to be charged 1*d.* per last; foreign *d.*

§ 33. All *British* corn that shall be brought into the river *Thames*, eastward of *London* bridge, and shall be sold and delivered, shall be charged with the sum of 1*d. per* last or ten quarters; and all foreign corn, when delivered out of any ship or

(a) Vide stat. 3 G. 4. c. 60. § 12, p. 777. by which so much of this act as relates to *Guernsey, Jersey, Alderney*, and *Sark*, is repealed.

vessel in the port of *London*, shall be charged with the sum of 2*d.* *per* last or ten quarters; and it shall be lawful for the inspector of corn returns for the city of *London* to demand, collect, and receive the same, from every corn [illegible] or importer of corn respectively, on whose account such [illegible] foreign corn shall be sold and delivered, or shall be delivered out of the ship or vessel in which the same shall have been imported, as the case may be: and the corn factor or importer shall deliver a full and true account of the quantity of the said corn, to the corn inspector, within one week after the sale and delivery thereof, or the delivery thereof from the ship or vessel, with the name of the master or commander of such ship or vessel.

1 & 2 G 4. c.87.

corn, 2*d.* per last.

Corn factor to give an account of the quantity of corn sold.

§ 34. "An account of the monies so received by the said inspector of corn returns, or the deputy then executing the said office during any such disability, by sickness as aforesaid, twice in every year; (that is to say,) at the quarter sessions holden for the city of *London* next after *Christmas* and *Midsummer*, shall be stated and delivered by him to the lord mayor and aldermen then and there assembled; and it shall and may be lawful to and for the said lord mayor and aldermen, and they are hereby authorised and required, under their hands and seals, to empower the said inspector of corn returns, out of the said sum and sums so received, to retain and apply to his own use and benefit any sum not exceeding the rate of 200*l.* *per annum*, nor less than 100*l.* *per annum*, from which said sum shall always be first deducted such sum as shall by the said lord mayor and aldermen be directed and ordered (which order and direction they are hereby empowered to make) to be paid to or retained by any deputy or deputies then executing, or who hath or have executed, the said office during any such disability by sickness as aforesaid; and such part of the residue or overplus of the monies so collected and received shall be paid over, without delay, to such of the proprietors of the said estate of the corn exchange as manage and regulate the same as aforesaid, to the use and benefit of the said estate, as shall be sufficient to repay thereunto all such monies as may have been therefrom issued or expended, in providing, completing, and keeping in repair such apartment or office; and the remainder thereof (if any) shall be paid to the receiver-general of H. M.'s customs; and after such payment made, the said inspector of corn returns, or any deputy executing such office as aforesaid, their heirs, executors, administrators, and successors, shall be for ever discharged and exonerated."

An account of the monies received by inspector or his deputy to be delivered to the lord mayor, &c. twice a year.

Inspector, &c. may retain any sum not exceeding 200*l.* nor less than 100*l.* per annum.

Application of the residue.

§ 35. It shall be lawful for the said lord mayor and aldermen, at any sessions holden in the months of *April*, *July*, *October*, and *January* yearly, for the said city, to inquire into and examine the said inspector of corn returns, or the deputy then executing the said office as aforesaid, and he is hereby required to declare and make known, whether any of the said corn factors or importers as aforesaid have neglected or refused to pay and discharge (the same having been demanded) any sum or sums of money from him due and owing, on account of the said penny charged on *British* corn, or 2*d.* on foreign corn *per* last, by him so sold and delivered, or so imported, as the case may be; and in case the same shall, upon due proof and hearing, appear to the satisfaction of the court, then it shall be lawful for the lord mayor, or

Lord mayor, &c. in sessions may inquire of inspector, &c. whether any persons have neglected to pay the dues on corn; and may issue warrant to levy the same.

1 & 2 G. 4. c. 87. any two aldermen, by warrant of distress and sale of the goods and chattels of the party so neglecting or refusing, to cause to be levied such sum of money as shall be thereupon due and owing; and after rendering the overplus (if any) to the party whose goods shall be so distrained and sold (the charges of such distress and sale being first deducted), the money so levied shall be paid over to the said inspector of corn returns, or his deputy then executing the said office, to be accounted for as herein directed and required.

Payment of country inspectors.

§ 36. The inspectors appointed in pursuance of this act, for the several cities and towns therein mentioned (the city of *London* excepted), shall be paid quarterly, by the collector or other chief officer of H. M.'s customs or excise in each of the said towns respectively, such a sum for each return made by such inspectors as shall appear to the said magistrates or mayors, or other chief officers, to be a fit and reasonable allowance to such inspector for the discharge of his duties, under the provisions of this act: provided that the total amount of such allowance shall in no case exceed the yearly sum of 30*l.* to each inspector; and provided further, that the receiver of corn returns shall have certified to the said collector, or other chief officer of H. M.'s customs or excise, previous to the payment of such allowance, that the returns for which such allowance is claimed by the inspectors have been properly made, which certificate the said receiver is hereby required to make and transmit quarterly; and provided also, that before any such payment shall be made to any such inspector, he shall have produced his book, containing the entries of the several returns received by him from the dealers in corn, to a general or petty sessions, in order that the same may be examined, and, if approved, be signed by the magistrates thereat, a certificate of which approbation shall also be signed by the said magistrates, and be delivered in duplicate to the said inspector, one copy thereof to be produced by him to the said collector, or other chief officer of H. M.'s customs or excise, and the other copy to be transmitted to the receiver of corn returns in *London*.

No allowance to exceed 30*l.* per annum.

Penalty on making fraudulent returns.

§ 38. If any such factor or dealer shall make a false return to any of the said inspectors, or shall in any way endeavour to make the amount of corn or grain sold or bought by him appear to be either more or less than the true *bonâ fide* amount of the said corn or grain, according to the *Winchester* bushel as aforesaid, every such factor or dealer shall, for every such false return, forfeit a sum not exceeding 20*l.* nor less than 40*s.*; and whenever any of the said inspectors shall have reason to believe that any such factor or dealer has made a false return, or has endeavoured to make the amount of the corn or grain sold or bought by him appear to be either more or less than the true *bonâ fide* amount of the said corn or grain, according to the *Winchester* bushel as aforesaid, such inspector shall notify the same to the receiver of corn returns at the time that he makes his return; and the said receiver of corn returns is hereby authorised and required to strike out of the said return the amount and price of any such corn or grain as aforesaid, and shall not admit the same into any account or average which he may make up under the provisions of this act, or of any other act.

§ 47. "No fee shall be taken by the clerk of any justice of peace, or other person before whom any oath, affirmation, or declaration shall be taken or made, by the directions of this act, on account of such oath, affirmation, or declaration."

1 & 2 G. 4. c. 87. No fee on taking oath.

§ 48. "All forfeitures created and penalties inflicted by this act shall and may be sued for, prosecuted, and recovered, in any of H. M.'s courts of record at *Westminster*, in such manner, and by such ways, means, and methods, as penalties inflicted, or forfeitures created, for any offences against the laws of customs, may now legally be sued for, prosecuted, and recovered, and the produce disposed of in the like manner, and applied to the like uses and purposes, unless otherwise especially provided for by this act: provided always, that any penalty or forfeiture inflicted by this act on any corn factor, or on any dealer in corn, malt, meal, or flour, for sale as aforesaid, or on any inspector of corn returns, may be sued for and recovered before any two justices of the peace of the county, riding, division, city, or town where such corn factor, or dealer in corn, malt, meal, or flour for sale, or inspector of corn returns shall reside; and such two justices shall, and they are hereby authorised and required, if upon due proof and examination of the matter it shall appear to them that such corn factor, or dealer in corn, malt, meal, or flour, for sale, or inspector of corn returns, is guilty of the offence against this act then alleged against him, to convict him thereof, and by warrant under their hands and seals, to levy such penalty by distress and sale of his goods and chattels; and such penalty shall be applied in manner hereinbefore mentioned."

How penalties to be recovered.

§ 49. "No bill, plaint, or information, shall be brought or sued for in any of H. M.'s courts of record at *Westminster*, for any offence against this statute, in cases where such offences are by this act cognisable by justices of the peace, relating to the same offences, or any forfeitures or penalties for the same, but the determination of the justices of the peace in the county where such offence or offences shall be committed, shall be final to all intents and purposes whatsoever."

Determination of justices final.

§ 50. If any action or suit shall be brought or commenced against any person or persons for any thing by him, her, or them done by virtue or in pursuance of this act, such action or suit shall be commenced *within three months* next after the matter or thing done, and shall be laid in the proper county; and the defendant or defendants in such action or suit shall and may plead the general issue, and give this act and the special matter in evidence, at any trial to be had thereupon; and if afterwards a verdict shall pass for the defendant or defendants, or the plaintiff or plaintiffs shall discontinue his, her, or their action or actions, or be nonsuited, or judgment shall be given against him, her, or them, upon demurrer or otherwise, then such defendant or defendants shall have treble costs awarded to him, her, or them, against such plaintiff or plaintiffs.

General issue, &c.

By stat. 54 *G.* 3. *c.* 69. The exportation of corn, grain, meal, malt, and flour, from any part of the U. K. is permitted, without payment of any duty, and without the receiving of any bounty whatever.

54 G. 3. c. 69. Exportation of grain permitted

By stat. 55 *G.* 3. *c.* 26. intituled "*An act to amend the laws now in force for regulating the importation of corn,*" § 1. All corn, meal,

55 G. 3. c. 26. Corn may at all times be import

55 G.3. c.26.

ed and warehoused duty free.

or flour, the growth, produce, or manufacture of any foreign country, which may now by law be imported into the U. K., shall at all times be allowed to be brought to the said U. K., and to be warehoused there, under the regulations and provisions of the laws now in force, and at all times be exported according to such laws, without payment of any duty whatever.

Corn may be taken out of warehouse for home consumption.

§ 2. And all *such* corn, meal, or flour, may be taken out of the warehouse, and entered for *home consumption*, subject to the regulations now in force, whenever foreign corn, &c. of the same sort is admissible into the said U. K. for home consumption duty free.

Prices at which foreign corn may be imported for home consumption. See stat. 3 G.4. c. 60. *post*, by which these average prices are reduced.

§ 3. Foreign corn, meal, or flour shall be permitted to be imported for home consumption, whenever the average prices of *British* corn, made up and published in the manner now by law required, shall be as follows:

Wheat, at or above	-	80*s*. per quarter.
Rye, pease, and beans	-	53*s*.
Barley, bear, or bigg	-	40*s*.
Oats - - - -	-	27*s*.

§ 4. Whenever the average prices of *British* corn, so made up and published, shall respectively be below the prices herein before stated, no foreign corn, meal, or flour, shall be imported, or taken out of warehouses for home consumption.

Times for taking the average prices of *British* corn. See 1 & 2 G.4. c. 87. § 35.

§ 5. The average price of the several sorts of *British* corn, by which the importation of foreign corn, meal, or flour into the U. K. shall be regulated and governed, shall continue to be made up and published in the manner now required by law: but if it shall appear that the average prices of *British* corn, in the six weeks succeeding the 15*th days of February, May, August*, and *November* in each year, shall have fallen below the prices at which foreign corn, &c, may be imported by this act for home consumption, no such foreign corn shall be allowed to be so imported for home consumption, from any place between the rivers *Eyder* and *Bidassoa*, both inclusive, until a new average shall have been made up and published.

Prices at which corn from American colonies may be imported. See stat. 3 G.4. c.60. § 5. *post*, by which these average prices are reduced.

§ 6, 7. But corn, the growth, produce, or manufacture of any *British* colony or plantation *in North America*, may be imported for home consumption, duty free, according to a different scale of average prices of *British* corn, viz. when such prices shall be as follows:

Wheat, at or above	-	67*s*. per quarter.
Rye, pease, and beans	-	44*s*.
Barley, bear, or bigg	-	33*s*.
Oats - - - -	-	22*s*.

But when the average prices of *British* corn shall be below such scale, no such importation shall be allowed.

Provisions of former acts extended to this act.

By § 11. All the provisions of former statutes for ascertaining the average prices of corn, and for regulating the importation and exportation of corn, &c. are extended to this act.

1 & 2 G.4. c.87. No corn ground, except wheat meal, wheat

By stat. 1 & 2 G.4. c. 87. § 2. No corn *ground*, except wheat meal, wheat flour, and oatmeal, nor any malt, shall be imported into *G. B.* from parts beyond the seas, under penalty of the forfeiture thereof, together with the ship or vessel in which the same

shall be imported, with her guns, furniture, ammunition, tackle, and apparel, and the same shall and may be seized by any officer or officers of the customs.

1 & 2 G. 4. c. 87. flour, oatmeal, nor any malt, to be imported.

§ 46. Every act of parliament in force on and immediately before the passing of this act, by which any conditions, rules, regulations, or restrictions were made, established, or directed for the better securing the revenue of customs, or for the regular *importation into* or *exportation from G. B.*, or the bringing or carrying coastwise, or from port to port, within the said kingdom, or the entering, landing, or shipping of any goods, wares, or merchandises whatever, except where any alteration is expressly made by this act, shall and they are hereby declared to be and remain in full force, and shall be applied to the subject of this act, and for carrying the same into execution, as fully and effectually as if they had been repeated and re-enacted in this present act.

All acts for securing revenue to continue in force.

By stat. 55 *G.* 3. *c.* 26. § 8, 9. Corn, &c. from *British* colonies, &c. in *North America,* may *at all times* be imported and warehoused duty free; and may also be taken out of such warehouses and entered for home consumption, duty free, whenever corn, &c. of the like description, imported direct from any such colony, &c. shall be admissible by law for home consumption.

55 G. 3. c. 26. Corn from American colonies may be imported and warehoused at all times. Sed vide stat. 3 G. 4. c. 60. § 7. *post.*

By stat. 1 & 2 *G.* 4. *c.* 87. § 41. After reciting, that whereas by stat. 55 *G.* 3. *c.* 26. it is enacted "that corn, meal, or *flour,* the growth, produce, or manufacture of any foreign country, which may by law be imported into the U. K., shall and may at all times be allowed to be brought to the said U. K., and be warehoused there under the regulations and provisions of the laws in force relating to corn, without payment of any duty whatever, and not taken out but under the regulations and provisions required by law: and whereas considerable quantities of corn, meal, and flour have been imported and warehoused under the regulations of the before-recited act, and frauds may be committed in procuring corn, meal, or flour to be taken out of warehouses contrary to the before-recited act;" it is therefore enacted, "that no corn, meal, or *flour* (*a*) shall be permitted to be taken out of the warehouse or warehouses in which the same shall have been warehoused, until the proprietor or proprietors, occupier or occupiers of such warehouse or warehouses shall enter into bond, with two sufficient sureties to H. M., his heirs and successors, in the sum of 2000*l.*, with condition that no such corn, meal, or flour, shall be taken out of such warehouse or warehouses, otherwise than under the regulations and provisions now by law in force."

1 & 2 G. 4. c. 87. 55 G. 3. c. 26. § 1. *ante,* 772.

No corn, &c. shall be taken out of warehouse until bond is entered into that certain conditions shall be complied with.

(*a*) But see stat. 5 G. 4. c. 70. *post,* 774.

§ 42. The proprietor or occupier of any warehouse, in which any corn, meal, or flour, which shall hereafter be warehoused under the regulations of the before-recited act, shall enter into bond, with two sufficient sureties to H. M. his heirs and successors in the sum of 2000*l.*, with condition that no such corn, meal, or flour, shall be taken out of such warehouse, otherwise than under the regulations and provisions now by law in force; provided, that bond as hereinbefore required shall not have been already entered into by the proprietor or occupier of such warehouse.

Proprietor or occupier of warehouse to enter into such bond.

§ 43. It shall be lawful for the proper officer of the customs to take a sample, not exceeding half a peck, from the bulk of each importation of corn which have been already warehoused, and also from the bulk of each importation which hereafter shall

Officer of customs to take samples of corn that is warehoused.

& 2 G.4. c.87. be made and warehoused, and to keep the same until such corn shall be taken out of the warehouse, either for exportation or home consumption, and to compare such sample with the corn so to be taken out, and if the same shall be found to agree therewith in quality, the same to be returned: but if it shall appear not to agree therewith, in consequence of any exchange of the corn imported and warehoused having taken place, then and in such case the corn so intended to be taken out shall be forfeited, and shall be seized by any officer of the customs.

Penalty for obstructing officers in taking samples, 200*l.*

§ 44. "If any person or persons shall obstruct or hinder any such officer or officers of the customs in taking any such sample or samples, the person or persons so offending therein shall for each and every such offence severally forfeit the sum of 200*l.*"

Corn when taken out of warehouses to be re-measured, &c.

§ 45. Before any such corn, meal, or flour shall be taken out of the warehouse in which the same shall have been deposited, either for home consumption or exportation, the said corn shall be re-measured, and the said meal or flour re-weighed, in like manner as when the same were imported at the charge and expence of the proprietor or occupier of such warehouse, under the inspection of and certificate thereof delivered to the proper officer of the customs, in order to ascertain whether any of the quantity originally imported and warehoused had or had not been removed or taken out of such warehouse.

5 G.4. c.70.

By stat. 5 *G.* 4. *c.* 70. passed 17th *June*, 1824, and intituled "*An act to permit flour to be substituted for foreign wheat secured in warehouses*," reciting, whereas foreign wheat, which was imported into this kingdom prior to 13th *May*, 1822, and secured in warehouses, is allowed by law to be taken out for home consumption in cases and under conditions more favourable than is allowed in respect of wheat imported since that day, but no opportunity has as yet occurred, by which the proprietors of such foreign wheat have been able to avail themselves of the benefit therein intended to them: and whereas it might enable the proprietors of such wheat to effect the exportation thereof, if they were permitted to take the same out of such warehouses to be ground into flour under certain regulations: and whereas one barrel of best fine wheat flour, weighing 196 lbs., is equivalent to 5 bushels of wheat of average quality; it is enacted, that from and after the passing of this act, it shall be lawful for the importer or proprietor of any foreign wheat imported before the said 13th *May*, 1822, and secured in warehouse under the laws in force, to take the same out of the warehouse, upon his giving bond, with two sufficient sureties, to be approved by the collector and comptroller of the customs, in the penal sum of 5*l.* for every quarter of wheat to be taken out, with condition to return into such warehouse, or some other warehouse in which foreign corn may be secured under the laws in force, within 2 months from the date of such bond, an equivalent quantity of best fine wheat flour, computed after the rate of 196 lbs. of such flour for every 5 bushels of such wheat, there to be kept and secured in lieu of such wheat, subject to the same rules, regulations, restrictions, penalties, and forfeitures as such wheat, or as any foreign flour imported and secured in warehouses, under the laws in force, was or would be subject to.

Foreign wheat may be taken out of warehouse on the proprietor's giving bond with condition to return into such warehouse an equivalent quantity of flour in lieu of such wheat.

Notice to be given before wheat is taken out.

By § 2. One day at least before any such wheat shall be taken out of such warehouse for the purpose of such exchange, the importer or proprietor thereof shall deliver a notice in writing to the

principal officer of the customs having charge of such warehouse, of the quantity and of the particular parcel or parcels of the wheat (referring to the importation thereof) intended to be so exchanged for flour, and of the name or description and situation of the warehouse in which the equivalent quantity of flour is to be deposited, and shall also produce to such officer a certificate of the collector and comptroller that the bond hereinbefore required has been given for such wheat.

5 G. 4. c. 70.

By § 3. Such bond shall not be discharged until the proper officers of the customs have ascertained that the flour so deposited is fine wheat flour of the best quality; and if any package so deposited, purporting to contain such flour, shall be found to contain flour of an inferior quality, or any other article than the best fine wheat flour, such package and the contents thereof shall be forfeited, together with the penal sum of 5*l*., secured by such bond, for every quarter of the wheat for which the same was intended to be deposited as an equivalent quantity of flour.

Bond not to be discharged till officer of customs has ascertained the quality, &c. of the flour.

By § 4. It shall be lawful to remove any foreign corn from the warehouse in which the same shall at any time be secured, to any other warehouse, in any part of the U. K., in which foreign corn may be secured upon the importation thereof, under the like rules, regulations, and conditions as other goods may be removed from one warehouse to another under the provisions of stat. 4 *G.* 4. *c.* 24. (Warehousing consolidation act.)

Foreign corn may be removed from one warehouse to another, under same regulations as other warehoused goods.

Stat. 3 *G.* 4. *c.* 60. intituled "*An act to amend the laws relating to the importation of corn.*"

3 G. 4. c. 60.

By § 1. After reciting stat. 55 *G.* 3. *c.* 26. it is enacted, "that as soon as foreign wheat shall have been admitted for home consumption under the provisions of the said act, the scale of prices at which the home consumption of foreign corn, meal, or flour, is permitted by the said act, shall cease and determine."

Scale of prices in recited act to cease when foreign corn is admitted for home consumption.

§ 2. Enacts, that thereafter foreign corn, meal, or flour shall and may be permitted to be imported into the U. K. and into the *Isle of Man*, for home consumption, under the regulations now in force, whenever the average prices of the several sorts of *British* corn made up and published in the manner now by law required for regulating the importation of foreign corn, meal, or flour for home consumption, shall be at or above the prices hereinafter mentioned; that is to say, whenever wheat shall be as follows:

Whenever the average prices of British corn shall be as herein stated, foreign corn, &c. may be imported.

Wheat, at or above - -	70*s*. per quarter.
Rye, pease, or beans - -	46*s*.
Barley, bear, or bigg - -	35*s*.
Oats - - - - -	25*s*.

§ 3. Whenever foreign corn, meal, or flour shall be admissible under the provisions of the above recited act or of this act, there shall be paid, upon all such foreign corn, meal, or flour, when admitted for home consumption, whether imported and warehoused previous to its becoming so admissible for home consumption or otherwise, the several duties specified in schedule (A).

When foreign corn, &c. shall be admitted for home consumption, the duties specified in schedule (A) shall be paid.

§ 4. "As soon as the scale of prices at which the home consumption of foreign corn, meal, or flour is permitted by the above-recited act shall cease and determine according to the provisions of this act, then the scale of prices at which corn, meal, or flour, being the growth, produce, or manufacture of any *British* colony

When scale of prices of recited act shall cease, then the scale of prices of British

3 G. 4. c. 60.

North American corn, &c. shall also cease.

or plantation in *North America*, is now by law admissible for home consumption, under the provisions of the said act, shall also cease and determine."

British North American corn, &c. may be imported when the average prices of British corn shall be as herein specified.

§ 5. Enacts, that thereafter corn, meal, or flour, of the growth, produce, or manufacture of any *British* colony or plantation in *North America*, shall be permitted to be imported into the said U. K. and into the *Isle of Man*, for home consumption, under the regulations now in force whenever the average prices of the several sorts of *British* corn, made up and published in the manner now by law required shall be at or above the prices hereinafter mentioned; that is to say, whenever the price of wheat shall be as follows:

Wheat, at or above	- -	59*s*. per quarter.
Rye, pease, and beans	- -	39*s*.
Barley, bear, or bigg	- -	30*s*.
Oats	- - - - -	20*s*.

When British corn is below the prices herein specified, British American corn shall no longer be imported.

§ 6. Whenever the prices of *British* corn shall be below the prices herein specified, corn, or meal, or flour made from any of the respective sorts of corn herein enumerated, the growth, produce, or manufacture of any *British* colony or plantation in *North America*, shall no longer be allowed to be imported for home consumption.

Duties specified in schedule (B) payable on British American corn.

§ 7. Whenever corn, meal, or flour, of the growth, produce, or manufacture of any *British* colony or plantation in *North America*, shall be admissible for home consumption, under the provisions of the above recited act or of this act, there shall be paid upon all such corn, meal, or flour, when admitted for home consumption, whether imported and warehoused previous to its becoming so admissible for home consumption or otherwise, the several duties specified in schedule (B).

Warehoused foreign corn, &c. may be taken out for home consumption when the average prices of British corn shall be as herein specified.

§ 8. From and after the passing of this act any foreign corn, meal, or flour that may have been in warehouse on the 13th day of *May*, 1822, and may continue in warehouse at the passing of this act, may be taken out of warehouse for home consumption, whenever the average prices of *British* corn, made up and published in the manner now by law required, shall be as follows:

Wheat, at or above	- -	70*s*. per quarter.
Rye, pease, or beans	- -	46*s*.
Barley, bear, or bigg	- -	35*s*.
Oats	- - - - -	25*s*.

Duties specified in schedule (A) payable on warehoused foreign corn, &c. before taken out for home consumption.

§ 9. No such foreign corn, meal, or flour now in warehouse, shall be taken out under the provisions aforesaid, unless there be previously paid, upon the said corn, meal, or flour, the several duties specified in schedule (A): provided always, that nothing in this act shall extend to charge any duty upon any such foreign corn, meal, or flour being in warehouse on the 13th day of *May*, 1822, which shall be taken out of warehouse for home consumption, after foreign corn shall be admissible for home consumption, under the provisions of the said recited act of 55 *G*. 3.

Warehoused British American corn may be taken out for

§ 10. From and after the passing of this act any corn, meal, or flour, of the growth, produce, or manufacture of any *British* colony or plantation in *North America*, that may have been in warehouse on the 13th day of *May*, 1822, and may continue in warehouse at

the passing of this act, may be taken out of warehouse for home consumption, whenever the average prices of *British* corn, made up and published in the manner now by law required, shall be as follows:

3 G.4. c.60.

home consumption, when the average prices of British corn shall be as herein specified.

Wheat, at or above	-	-	59*s*. per quarter.
Rye, pease, and beans	-	-	39*s*.
Barley, bear, or bigg	-	-	30*s*.
Oats - -	-	-	20*s*.

§ 11. No such corn, meal, or flour, of the growth, produce, or manufacture of any *British* colony or plantation in *North America*, now in warehouse, shall be taken out, unless there be previously paid, upon the said corn, &c. the duties specified in schedule (B): provided always, that nothing in this act contained shall extend to charge any duty upon any such corn, meal, or flour, the growth, produce, or manufacture of any *British* colony or plantation in *North America*, being in warehouse on the 13th day of *May*, 1822; which shall be taken out of warehouse for home consumption after such corn, meal, or flour shall be admissible for home consumption under the provision of stat. 55 *G*. 3. *c*.26.

Duties specified in schedule (B.) payable on warehoused British American corn before taken out of warehouse.

§ 12. So much of stat. 1 & 2 *G*. 4. *c*. 87. as enacts, "that whenever the ports of the U. K. shall be shut against the importation of foreign corn, meal, or flour for home consumption, the ports of the islands of *Guernsey*, *Jersey*, *Alderney*, and *Sark*, shall be in like manner shut against the importation of such foreign corn, meal, or flour, for home consumption; and that whenever any such foreign corn, meal, or flour shall be permitted to be imported into the ports of the U. K. for home consumption, foreign corn, meal, or flour may in like manner be imported into the ports of the islands of *Guernsey*, *Jersey*, *Alderney*, and *Sark*, is repealed.

Repeal of 1 & 2 G.4. c.87. so far as relates to Guernsey, &c. *Ante*, p. 768.

§ 13. From and after the passing of this act, whenever the ports of the U. K. shall be shut against the importation of foreign corn, meal, or flour for home consumption, the said ports shall be also shut against the importation of corn, meal, or flour, the growth, produce, or manufacture of the said islands of *Guernsey*, *Jersey*, *Alderney*, and *Sark*.

When ports are shut against foreign corn, they shall also be shut against corn from Guernsey, &c.

Schedule to which Stat. 3 G. 4. c. 60. refers (A.)

When imported from any foreign county.	Wheat.	Rye, Pease, and Beans.	Barley, Bear, or Bigg.	Oats.
If under, per Quar.	80s. -	53s. -	40s. -	28s.
High duty -	- 12s.	- 8s.	- 6s.	- - 4s.
Additional, for First Three Months -	- 5s.	- 3s. 6d.	- 2s. 6d.	- - 2s.
If at or above, per Quarter -	80s. -	53s. -	40s. -	28s.
But under, do. -	85s. -	56s. -	42s. 6d. -	30s.
First Low Duty -	- 5s.	- 3s. 6d.	- 2s. 6d.	- - 2s.
Additional, for First Three Months -	- 5s.	- 3s. 6d.	- 2s. 6d.	- - 2s.
If at or above, per Quarter -	85s. -	55s. -	42s. 6d. -	30s.
Second Low Duty	- 1s.	- 8d.	- 6d.	- - 4d.
	Duty upon wheat Meal and Flour, to be as follows:			Duty upon Oat-meal to be as follows:
First High Duty, per Cwt. when Wheat is under 80s. per Quar.	- 3s. 3d.	- -	- -	High Duty per Boll when Oats are under 28s. per Quar. - 4s. 10d.
Additional, for First Three Months -	- 1s. 7d.	- -	- -	Additional, for First Three Months - 2s. 2d.
First Low Duty, when Wheat is at or above 80s. per Quar., but under 85s. per Quarter -	- 1s. 7d.	- -	- -	First Low Duty, when Oats are at or above 28s. per Quarter but under 30s. per Quarter, 2s. 2d.
Additional for First Three Months -	- 1s. 7d.	- -	- -	Additional, for First Three Months - 2s. 6d.
Second Low Duty, when Wheat is at or above 85s. per Quarter -	- 4d.	- -	- -	Second Low Duty, when Oats are at or above 30s. per Quarter - 6d.
	Malt made of Wheat prohibited.	Rye ground, or Malt made of Rye, Pease ground, and Beans ground, prohibited.	Barley, Indian Corn or Maize, Bear or Bigg, ground, and Malt made of Barley, Indian Corn or Maize, Bear or Bigg, prohibited.	Malt made of Oats, prohibited.

Schedule (B.)

When imported from the Province of Quebec, or the other British Colonies or Plantations in North America.	Wheat.	Rye, Pease, and Beans.	Barley, Bear, or Bigg.	Oats.
If under per Quar.	67s. -	44s.	33s. -	22s. 6d.
High Duty -	- - 12s.	- 8s.	- 6s.	- - 4s.
Additional, for First Three Months -	- - 5s.	- 3s. 6d.	- 2s. 6d.	- - 2s.
If at or above, per Quarter -	67s. -	44s. -	33s. -	22s. 6d.
But under, do. -	71s. -	46s. -	35s. 6d. -	24s.
First Low Duty -	- - 5s.	- 3s. 6d.	- 2s. 6d.	- - 2s.
Additional, for First Three Months	- - 5s.	- 3s. 6d.	- 2s. 6d.	- - 2s.
If at or above, per Quarter -	71s. -	46s. -	35s. -	24s.
Second Low Duty	- - 1s.	- 8d.	- 8d.	- - 4d.
	Duty upon Wheat Meal or Flour, to be as follows:			Duty upon Oatmeal to be as follows:
First High Duty, per Cwt. when Wheat is under 67s. per Quar.	- 3s. 3d.	- -	- -	High Duty per Boll when Oats are under 22s. 6d. per Quar. - 4s. 10d.
Additional, for First Three Months -	- 1s. 7d.	- -	-	Additional, for First Three Months - 2s. 2d.
First Low Duty, when Wheat is at or above 67s. per Quar., but under 71s. per Quarter -	- 1s. 7d.	- -	- -	First Low Duty, when Oats are at or above 22s. 6d. per Quarter, but under 24s. per Quarter 2s. 2d.
Additional, for First Three Months -	- 1s. 7d.	- -	- -	Additional, for First Three Months - 2s. 2d.
Second Low Duty, when Wheat is at or above 71s. per Quarter -	- 4d.	- -	- -	Second Low Duty, when Oats are at or above 24s. per Quarter - 6d.
	Malt made of Wheat prohibited.	Rye ground, or Malt made of Rye, Pease ground, and Beans ground, prohibited.	Barley, Indian Corn or Maize, Bear or Bigg, ground, and Malt made of Barley, Indian Corn or Maize, Bear or Bigg, prohibited.	Malt made of Oats, prohibited.

IV. Obstructing the free Passage of Corn.

36 G. 3. c. 9. Persons hindering the buying of corn or seizing the same.

By stat. 36 *G.* 3. *c.* 9. § 1. If any person shall wilfully and maliciously beat, wound, or use any other violence to any person with intent to hinder him from buying of corn or grain in any market or other place; or shall unlawfully stop or seize any wheat, flour, meal, malt, or other grain, in or on the way to or from any city, market-town, or place; or shall wilfully and maliciously break, cut, or destroy any waggon, cart, or other carriage wherein any such wheat, flour, &c. shall be loaden, or the harness of any horse drawing or carrying the same, or shall unlawfully take off, drive away, kill, or wound any such horse, or beat or wound the driver, or shall, by cutting the sacks or otherwise, scatter or throw abroad such wheat, flour, meal, malt, or other grain, or shall take or carry away, spoil, or damage the same or any part thereof; he shall, on conviction (A, B,) before two justices, (or in open sessions, who may summarily and finally hear and determine the same,) be sent to the gaol or house of correction (C) to be kept to hard labour, for any time not exceeding three months, nor less than one month. [And moreover, by stat. 11 *G.* 2. *c.* 22. § 1. if the same is done to prevent the *exportation* of corn, such offender shall be once publicly and openly whipped by the master of such gaol or house of correction in such city, market-town, or sea-port in or near which the offence shall be committed on the first convenient market-day, at the market-cross, or market-place there, between the hours of eleven and two.] 1 *East's P. C.* 425. 2 *id.* 1069.

Cutting the sacks.

(A, B.) Imprisonment on summary conviction.

(C.)

11 G. 2. c. 22.

11 G. 2. c. 22. 36 G. 3. c. 9. Persons offending a second time guilty of felony.

By stats. 11 *G.* 2. *c.* 22. § 2. and 36 *G.* 3. *c.* 9. § 2. If any such person, so convicted, shall commit any of the offences aforesaid a second time, or if any person shall wilfully or maliciously pull down, throw down, or otherwise destroy any storehouse, or granary, or other place where corn shall be then kept, or shall unlawfully enter any such storehouse, granary, or other place, and take and carry away any corn, flour, meal, malt, or grain therefrom, or shall throw abroad or spoil the same or any part thereof; or shall unlawfully enter on board any ship, barge, boat, or vessel, and shall wilfully and maliciously take and carry away, cast, or throw out therefrom, or otherwise spoil or damage any corn, meal, flour, malt, or grain, (or wheat intended for exportation,) therein; he shall be guilty of felony, and transported for seven years. 2 *East's P. C.* 1069.

11 G. 2. c. 22. 36 G. 3. c. 9. Hundred when answerable.

By stats. 11 *G.* 2. *c.* 22. § 5. and 36 *G.* 3. *c.* 9. § 3, 4. And the hundred shall answer damages (not exceeding 100*l.*) as in cases of robbery; the person injured giving notice of the offence in two days, by himself or servant, to a constable of the hundred, or the constable of the town, parish, village, hamlet, or tithing in or near which the fact shall be committed; and within ten days after such notice, giving in the examination on oath of himself or of his servant present at the time of the fact, or having the care of such his property to which such damage shall be done, before a justice of the peace, whether he or they know the persons that committed the fact, or any of them, and if so, then entering into recognisance to prosecute.

11 G. 2. c. 22.

But by stat. 11 *G.* 2. *c.* 22. § 7, 8. If any one of the offenders is convicted of the offence in twelve months, the hundred shall not

be liable; and therefore the action shall not be brought till after one year; nor shall it be commenced but within two years.

Stat. 36 *G.* 3. *c.* 9. § 6. Provides, that nothing herein shall abridge any law already made for the punishment of any offence herein mentioned: but no person shall be punished both by this and any former law.

36 G.3. c.9. Persons not to be punished both by this and former acts.

A. Warrant for a Person preventing the Buying or free Circulation of Corn.

A.

County of ——— } To the constable of ———, in the said county.

WHEREAS information and complaint hath been made unto us, J. P. *and* K. P., *esquires, two*(a) *of his majesty's justices of the peace in and for the said county, upon the oath of* A. I., *of* ———, *in the said county* ———, *that* A. O. *of* ———, *in the said county, labourer, did on the* ——— *day of* ———, *at* ———, *in the said county, wilfully and maliciously beat, wound, and use other violence* [or as the case may be] *to him the said* A. I. *with intent to hinder him from buying corn in the market of* ———, [or as the case may be,] *contrary to the statute in that case made and provided; These are therefore in his majesty's name to command you forthwith to apprehend the said* A. O. *and to bring him before us the said justices to answer the said complaint, and to be further dealt with according to law. Herein fail you not. Given under our hands and seals the* ——— *of* ———.

B. The Conviction may be made out from the preceding Conviction under this Head; or from the General Form under Title Conviction.

B.

C. Commitment to the House of Correction.

County of ——— { To the constable of ———, in the said county, and to the keeper of the house of correction at ———, in the said county.

WHEREAS A. O. *of* ———, *in the said county, labourer, hath this day been duly convicted before us* J. P. *and* K. P., *esquires, two of his majesty's justices of the peace in and for the said county, upon the oath of* A. I. *of* ———, *in the said county, yeoman, for that he the said* A. O. *on the* ——— *day of* ——— *now last past, at* ———, *in the said county, did wilfully and maliciously beat, wound, and use other violence to him the said* A. I., *with intent to hinder him from buying corn* [or, *from exporting corn from*, &c. as the case may be,] *in the market of* ———, [or as the case may be,] *contrary to the statute in that case made and provided; These are therefore to command you, the said constable, to convey the said* A. O. *to the house of correction at* ———, *in the said county, and to deliver him to the keeper thereof, together with this precept: And we do also hereby command you the said keeper of the said house of*

(*a*) One justice may receive the information and issue the warrant. See stat. 3 G.4. c.25. § 2, tit. Conviction.

correction to receive the said A. O. *into your custody in the said house of correction, and him there safely to keep to hard labour for the space of* [not more than three nor less than one] *months:* [*And we do further order that you, the said keeper, do publicly and openly whip the said* A. O. *in the said town of* ———, *in the said county, on the* ——— *day of* ——— *next, between the hours of* ———, *and* ——— *of the same day.*] (This latter clause only to be inserted where the act is done to prevent exportation.) *Herein fail you not. Given under our hands and seals the* ——— *day of* ———.

Coroner.

CORONERS are ancient officers by the common law, so called because they deal principally with the pleas of the crown, and were of old time the principal conservators of the peace. 1 *Inst.* 271. 2 *Haw. c.* 9. § 1.

Concerning whom I shall shew,

§ I. *Who may be a Coroner.*
[3 Ed. 1. c. 10.—28 Ed. 1. c. 3.—14 Ed. 3. st. 1. c. 8. —28 Ed. 3. c. 6.—15 R. 2. c. 3.—33 H. 8. c. 12.]

II. *How chosen.*
[28 Ed. 3. c. 6.—58 G. 3. c. 95.]

III. *His Power and Duty in taking an Inquisition of Death.*
[3 Ed. 1. c. 10.—4 Ed. 1. st. 2.—1 & 2 Ph. & M. c. 13.]

IV. *His Power and Duty in other Matters.*
[4 Ed. 1. st. 2.]

V. *His Fees.*
[2 H. 7. c. 1.—25 G. 2. c. 29.]

VI. *Punishment for not doing his Duty.*
[3 Ed. 1. c. 9.—3 H. 7. c. 1.—25 G. 2. c. 29.]

I. Who may be a Coroner.

3 Ed. 1. c. 10. Dignity.

Of ancient time this office was of great estimation; for none could have it under the degree of a knight. 3 *Ed.* 1. *c.* 10. 4 *Inst.* 271.

14 Ed. st. 1. c. 8. Estate.

And by stat. 14 *Ed.* 3. *st.* 1. *c.* 8. No coroner shall be chosen unless he have land in fee, sufficient in the same county, whereof he may answer to all manner of people.

II. How chosen.

By stat. 28 *Ed.* 3. *c.* 6. The coroner (as of ancient time the sheriffs and conservators of the peace) shall be chosen in full county, that is, in the county court, by the commons of the same county.

28 Ed. 3. c. 6. To be chosen in the county court.

And this must be in pursuance of the king's writ for that purpose, issuing out of and returnable into the chancery: and none but freeholders have a voice at such election, for they only are suitors to the county court. 2 *Haw.* c. 9. § 5. 10.

By stat. 58 *G.* 3. *c.* 95. After reciting that whereas there are no sufficient regulations for the election of coroners for counties, it is enacted, that upon every election to be made of any coroner or coroners of any county in *England* and *Wales*, the sheriff of the county where such election shall be made shall hold his county court for the same election at the most usual place or places of election of coroners within the said county, and where the same have most usually been held for forty years last past, and shall there proceed to election at the next county court, unless the same fall out to be held within six days after the receipt of the writ *de coronatore eligendo*, or upon the same day; and then shall adjourn the same court to some convenient day, not exceeding fourteen days, giving ten days' notice of the time and place of election; and in case the said election be not determined upon the view, with the consent of the freeholders there present, but that a poll shall be demanded for determination thereof, then the said sheriff, or in his absence his under sheriff, with such others as shall be deputed by him, shall forthwith there proceed to take the said poll, in some public place, by the same sheriff, or his under sheriff as aforesaid in his absence, or others appointed for the taking thereof as aforesaid; and every such poll shall commence on the day upon which the same shall be demanded, and be duly and regularly proceeded in from day to day (*Sunday* excepted) until the same be finished; but so as that no poll for such election shall continue more than ten days at most (*Sunday* excepted), and the said poll shall be kept open seven hours at the least each day, between the hours of nine in the morning and five at night: And for the more due and orderly proceeding in the said poll, the said sheriff, or in his absence his under sheriff, or such as he shall depute, shall appoint such number of clerks as to him shall seem meet or convenient for the taking thereof; which clerks shall all take the said poll in the presence of the said sheriff or his under sheriff, or such as he shall depute; and before they begin to take the said poll, every clerk so appointed shall by the said sheriff or his under sheriff, or such as he shall depute as aforesaid, be sworn truly and indifferently to take the same poll, and to set down the names of each freeholder, and the place of his abode and freehold, and the name of the occupier thereof, and for whom he shall poll, and to poll no freeholder who is not sworn, if required to be sworn by the candidates or either of them, and which oaths of the said clerks the said sheriff or his under sheriff, or such as he shall depute, are hereby empowered to administer; and the sheriff, or in his absence his under sheriff as aforesaid, shall appoint for each candidate such one person as shall be nominated to him by each can-

58 G. 3. c. 95. Sheriff to hold his county court for the election of coroner at the usual place of election;

and if election not determined on view, then to proceed to take a poll.

Commencement and duration of poll.

Poll clerks to be appointed and sworn.

Inspector of poll clerk to be appointed.

58 G. 3. c. 95. Freeholder, if required, to be sworn before he polls.

didate, to be inspector of every clerk who shall be appointed for taking the poll; and every freeholder, before he is admitted to poll at the same election, shall, if required by the candidates, or any of them, first take the oath hereinafter mentioned, which oath the said sheriff by himself or his under sheriff, or such sworn clerk by him appointed for taking the said poll as aforesaid, is hereby authorised to administer; *videlicet*,

The oath of qualification.

YOU swear, [or, *being one of the people called* Quakers, *you solemnly affirm,*] *that you are a freeholder of the county of ———, and have a freehold estate, consisting of ———, lying at ———, within the said county; and that such freehold estate has not been granted to you fraudulently, on purpose to qualify you to give your vote at this election; and that the place of your abode is at ———;* [and if it be a place consisting of more streets or places than one, specifying what street or place;] *that you are twenty-one years of age, as you believe, and that you have not been before polled at this election.*

Punishment against perjury, or subornation of perjury.

And in case any freeholder or other person taking the said oath or affirmation hereby appointed to be taken by him as aforesaid, shall thereby commit wilful and corrupt perjury, and be thereof convicted, and if any person shall unlawfully or corruptly procure or suborn any freeholder or other person to take the said oath or affirmation in order to be polled, whereby he shall commit such wilful and corrupt perjury, and shall be thereof convicted, he and they for every such offence shall incur such pains and penalties as are declared in and by two acts of parliament, the one made in the fifth year of the late queen *Elizabeth*, intituled "*An act for punishment of such as shall procure or commit any wilful perjury;*" and the other made in the second year of his late majesty king *George* the second, intituled "*An act for the more effectual preventing and further punishment of forgery, perjury, and subornation of perjury, and to make it felony to steal bonds, notes, or other securities for payment of money;*" and by any other law or statute now in force for the punishment of perjury or subornation of perjury.

5 Eliz. c. 9.

2 G. 2. c. 25.

Mortgagor and cestuique trust to vote.

§ 2. No person or persons shall be allowed to have any vote at such elections for coroner or coroners of any county in *England* and *Wales* as aforesaid, for or by reason of any trust estate or mortgage, unless such trustee or mortgagee be in actual possession or receipt of the rents and profits of such estate; but the mortgagor or *cestuique* trust in possession shall and may vote for the same estate notwithstanding such mortgage or trust; and all conveyances of any messuages, lands, tenements, and hereditaments, in order to multiply voices, or to split or divide the interest in any houses or lands among several persons, to enable them to vote at elections for a coroner of any county as aforesaid, are hereby declared to be void and of none effect.

Expenses of sheriff and poll clerks to be paid by the candidates.

§ 3. All the reasonable costs, charges, and expenses, the said sheriff or his under sheriff or other deputy shall expend or be liable to in and about the providing of poll books, booths, and clerks (such clerks to be paid not exceeding 1*l.* 1*s.* each *per diem*), for the purpose of taking the poll at any such election, shall be borne, sustained, and paid by the several candidates at such election, in equal proportions.

Being elected by the county, if he be insufficient, and not able to answer such fines and other duties in respect of his office, as he ought, the county, as his superior, shall answer for him. 2 *Inst*. 175.

County to answer for him.

And being chosen by the county, his office continues, notwithstanding the demise of the king. 4 *Inst*. 271.

Office not void by the king's death.

After he is chosen, he shall be sworn by the sheriff, for the due execution of his office. 2 *Hale*, 55.

To be sworn.

The lord chief justice of the K. B., *virtute officii*, is the chief coroner of *England*. 2 *Hale*, 53.

Chief justice.

Coroners by charter, or commission or privilege, were ordinarily made by grant or commission without election: such are the coroners of particular lords of liberties and franchises, who by charter have power to create their own coroners or to be coroners themselves. Thus the mayor of *London* is by charter coroner within that city, and the court of the coroner is holden before him or his deputy: the bishop of *Ely* hath power to make coroners in the isle of *Ely* by the charter of *H*. 7. 2 *Hale*, 53. 4 *Inst*. 250. Queen *Cathrine* had the hundred of *Colridge* granted to her, by the king, 35 *H*. 8. with power to nominate coroners: *Ameredith's case*, 9 *Co*. 29 *b*.

Mayor of London, bishop of Ely, &c.

And therefore by stat. 28 *Ed*. 3. c. 6. where the power of electing coroners is confirmed to the counties, yet there is a saving to the king and other lords which ought to make such coroners of their seigniories and franchises. So that the king may grant coroners within certain precincts, and lords of franchises that have power to nominate coroners by charter, may still do it without election.

28 Ed. 3. c. 6. Saving of power to nominate coroners.

Within the admiralty jurisdiction, Lord *Hale* had not seen the grant, but heard that the Lord Admiral is either made coroner or hath power to make such within his jurisdiction, and of the death of a man or other articles belonging to the coroner arising upon the high sea, inquisitions have been usually taken by the coroners appointed by the king or his admiral, and here the coroners of the county have no jurisdiction. 2 *Hale*, 54.

Admiralty coroners.

Upon the open sea shore between high and low water mark, the jurisdiction of the admiralty and county coroners is alternate: that of the former accruing when the tide is in, that of the latter when it is out. So that if a man, stricken on the high sea, die on the shore on the reflux of the tide, the admiralty coroner has no jurisdiction. *Lacie's case*, 2 *Hale*, 17. 20. 1 *East's P. C.* c. 5. § 131.

Again, where the death was not *super altum mare*, but occurred by a sailor hanging himself on board a man of war in commission, lying within the harbour of *Portsmouth*, and the liberties of the borough, the court of K. B. granted an information against the defendant, her captain, for refusing the county coroner and his jury admission into the ship: though the admiralty insisted that they had a coroner of their own, but without showing that he had previously taken inquisition. The court noticed that as they did not pretend their coroner ever took inquisitions, so it was contended that none should be taken. And though there have been variety of opinions as to the admiralty jurisdiction, yet it was never carried farther than a pretence to a concurrent juris-

diction. *R.* v. *Solgard,* 2 *Stra.* 1097. *Andrews,* 231. S. C. and see 4 *Inst.* 141. 28 *H.* 8. *c.* 15. *ante,* tit. Admiralty Court, p. 32.

15 R. 2. c. 3.

The jurisdiction of the admiralty coroner in cases of "deaths done in great ships hovering in the main streams of great rivers, below the bridges of the same rivers, nigh to the sea," under stat. 15 *R.* 2. *c.* 3. is not exclusive of the county coroner's jurisdiction in rivers where a man can see from one side to the other. 1 *Hale,* 54.; or at least where a man standing on the one side of the land may see what is done on the other. *Haw. b.* 2. *c.* 9. *East,* P. C. *c.* 17. § 10. *ante,* tit. Admiralty Court, p. 32. But at least, adds Sir *E. H. East,* where there is any doubt, the jurisdiction of the common law ought to be preferred. Inquisitions before the admiralty coroner are returned to the commissioners upon stat. 28 *H.* 8. *c.* 15.; those before the county coroner are returned before the commissioners of gaol delivery for the county. 2 *Hale,* 54. 1 & 2 *P.* & *M.* *c.* 13. § 5. p. 788.

33 H. 8. c. 12. Coroner of the verge.

By stat. 33 *H.* 8. *c.* 12. the coroner of the king's house, usually called the coroner of the verge, is appointed by the lord steward or lord great master of the king's house for the time being, and since stat. *Articuli super Cartas,* 28 *Ed.* 1. *c.* 3. in inquisition to be taken of the death of a man, the coroner of the county shall join with the coroner of the king's house; and if it happen it cannot be determined before the steward, process shall be thereupon had at common law.

But yet in that case of death within the verge, the coroner of the county cannot take an inquisition without the coroner of the verge; and if he doth, it is void; but if one person be coroner of the county and also of the verge, the inquisition before him is as good as if the offices had been in several persons, and taken by both, 2 *Hale,* 55.; and though the court remove, yet he may proceed upon that inquisition as coroner of the county. *Wigg's case,* 4 *Rep.* 45, 46.

33 H. 8. c. 12. Murder or manslaughter in H. M.'s. palace.

But if a murder or manslaughter be done within the precincts of the king's palace limited by stat. 33 *H.* 8. *c.* 12. then by that statute the inquisition shall be taken by the coroner of the household without the adjoining or assisting of any coroner of any county by 12 or more of the yeomen, officers of H. M.'s household. And this shall be as sufficient as if taken also by the coroner of the county, and the method of the return and proceeding upon those inquisitions before the lord steward is therein declared and enacted.

III. His Power and Duty in taking an Inquisition of Death.

Notice.

When it happens that any person comes to an unnatural death, the township shall give notice thereof to the coroner. Otherwise if the body be interred before he come, the township shall be amerced. 4 *MS. Sum.* 333.

Burying without notice.

And by *Holt* C. J. It is a matter indictable to bury a man that dies a violent death, before the coroner's inquest have sat upon him. *Id.*

Lying unburied.

If the township shall suffer the body to lie till putrefaction, without sending for him, they shall be amerced. *Id.*

Precept to summon a jury.

When notice is given to the coroner, he is to issue a precept to the constable of the four, five, or six next townships to return a

competent number of good and lawful men of their townships, to appear before him in such a place to make an inquisition touching that matter. Or he may send his precept to the constable of the hundred. 2 *Hale*, 59. 4 *Edw.* 1. st. 2. *Wood's Inst. b.* 4. *c.* 1.

A coroner's inquisition ought to shew upon the face of it of what place the party who took it was corener; and that it was taken by the oath of "honest and lawful men." 2 *Ld. Raym.* 1305.

Default in not appearing. If the constables make not a return, or the jurors returned appear not, their defaults are to be returned to the coroner; and the constables or jurors in default shall be amerced before the judge of assize. 2 *Hale*, 59.

Swearing and charge. The jury appearing is to be sworn and charged by the coroner to enquire, upon the view of the body, how the party came by his death. 2 *Halo*, 60.

View of the body. For he can take inquisition of death only upon view of the body, and not otherwise, therefore if the body be interred before he come, he must dig it up. And this he may do lawfully within any convenient time, as in fourteen days. 2 *Haw. c.* 9. § 23. 4 *MS. Sum.* 333.

And in a recent case, it was expressly decided by the court of K. B. that a coroner's duty being judicial, he can only take an inquest *super visum corporis;* and that an inquest in which the jury were not sworn by the coroner himself, and *super visum corporis*, is absolutely void. The court, therefore, after an adjournment by the coroner of such an inquest, refused to grant any *mandamus* to compel him to proceed in it. *R.* v. *Ferrand, M.* 60 *G.* 3. 3 *B. & A.* 260.

Where the body cannot be viewed. If the body cannot be viewed, the coroner can do nothing: but the justices of the peace shall enquire thereof. 4 *MS. Sum.* 334.

Form of the charge where a person is slain. The jury being sworn, and the body upon view, he shall enquire upon the oaths of them, in this manner, by the statute of 4 *E.* 1. *st.* 2. called the statute *de officio coronatoris;* viz.

If they know where the person was slain; whether it were in any house, field, bed, tavern, or company;

Who are culpable, either of the act, or of the force; and who were present, either men or women, and of what age soever they be, if they can speak, or have any discretion;

And how many soever be found culpable; they shall be taken and delivered to the sheriff, and shall be committed to the gaol;

And such as be found, and be not culpable, shall be attached until the coming of the judges of assize.

Where a person slain is found in the fields or woods. And by the same statute, if it fortune any such man be slain, which is found in the fields, or in the woods, first it is to be enquired whether he were slain in the same place or not;

And if he were brought and laid there, they should do so much as they can to follow their steps that brought the body thither, whether he were brought upon a horse or in a cart.

It shall also be enquired if the dead person were known, or else a stranger, and where he lay the night before.

Wounds. Also by the same statute, all wounds ought to be viewed the length, breadth, and deepness; and with what weapons; and in what part of the body the wound or hurt is; and how many be culpable; and how many wounds there be; and who gave the wound.

Defendant's evidence.

And they must hear evidence on all hands, if it be offered to them, and that upon oath, because it is not so much an accusation or an indictment, as an inquisition or inquest of office. 2 *Hale*, 157.

In *R.* v. *Scorey*, 1 *Leach*, 43. the court of K. B. granted a rule against the coroner, to show cause why a criminal information should not be filed against him for refusing, on taking an inquisition *super visum corporis*, to receive evidence on the part of the person accused.

To enquire of the murderers lands and goods.

And by the aforesaid statute, if any be found culpable of the murder, the coroner shall immediately go to his house, and shall enquire what goods he hath, and how much land he hath, and what it is worth.

And when they have thus enquired upon every thing, they shall cause all the land, corn, and goods to be valued, in like manner as if they should be sold immediately; and thereupon they shall be delivered to the whole township, which shall be answerable before the judges for all.

Persons drowned or suddenly dead.

In like manner, by the said statute, it is to be enquired of them that be drowned, or suddenly dead, whether they were so drowned or slain, or strangled by the sign of a cord tied straight about their necks, or about any of their members, or upon any other hurt found upon their bodies. And if they were not slain, then ought the coroner to attach the finders, and all other in the company.

Flight.

He shall also enquire whether the persons found guilty, fled; for which flight they forfeit goods and chattels. 2 *Haw.* *c.* 9. § 27. 51.

Township amerced for an escape.

And if any person be slain or murdered in the daytime, and the murderer escape untaken, the township shall be amerced. 3 *H.* 7. *c.* 1.

Deodands.

Concerning horses, boats, carts, and the like, whereby any are slain, which properly are called deodands, they also shall be valued, and delivered unto the towns as before. 4 *E.* 1. *st.* 2.

Coroner's rolls.

All which things must be enrolled in the rolls of the coroner, 4 *Ed.* 1. *st.* 2.

Sheriff's rolls.

And the sheriff shall have counter rolls with the coroner, of things belonging to their office. 3 *Ed.* 1. *c.* 10.

Adjourning after view.

But it is not necessary that the inquisition be taken in the very same place where the body was viewed; but they may adjourn to a place more convenient. 2 *Haw.* *c.* 9. § 25.

Burial.

Immediately upon these things being enquired, the bodies of such persons being dead, or slain, shall be buried. 4 *Ed.* 1. *st.* 2.

1 & 2 P. & M. c. 13. Certifying to the assizes.

By stat. 1 & 2 *P.* & *M.* *c.* 13. § 5. Every coroner, upon any inquisition before him found, whereby any person shall be indicted for murder or manslaughter, or as accessary before the offence committed, shall put in writing the effect of the evidence given to the jury before him, being material; and shall bind over the witnesses to the next general gaol delivery to give evidence; and shall certify the evidence, the recognisance, and the inquisition or indictment before him taken and found, at or before the trial, on pain of being fined by the court.

By the express words of which statute, he may enquire of *accessaries before the fact*; but he cannot enquire of accessaries *after* the fact. 2 *Haw.* *c.* 9. § 26, 27.

Persons dying in prison.

He ought also to enquire of the death of all persons who die in prison, that it may be known, whether they died by violence, or

any unreasonable hardships; for if a prisoner, by the duress of the gaoler, come to an untimely death, it is murder in the gaoler, and the law implies malice in respect of the cruelty. 3 *Inst.* 52. 91.

And this inquest upon prisoners ought to consist of a party jury, that is, six of the prisoners (if so many there be), and six of the next vill or parish, not prisoners. *Umfreville's Coron.* 212.

If in any instance of violent death, the coroner, and jury impanelled, believe an individual to be guilty of manslaughter or murder, they are bound to frame their inquisition, containing the result of their enquiries, and to return it to the justices at the next assizes. Upon this inquisition, the party accused may be tried without the intervention of the grand jury. (2 *Hale*, 61. See *Maynard*'s case, *ante*, § VIII. *tit.* Bastard. And if an indictment be found for the same offence, and the defendant be acquitted on the one, he must be arraigned on the other, to which he may, however, effectually plead his former acquittal. The finding of a grand jury is regarded as of more weight than an inquisition taken before the coroner; as the court will, in their discretion, bail after the latter, but always refuse after the former; the reason of which may be, that in one case they can look into the depositions, to see if the evidence supports the charge of murder, whereas in the other, the investigation is secret, and does not admit of a summary revision. 2 *Str.* 911. 1242. It is the practice to prefer an indictment to the grand jury, and to try the party accused, upon both proceedings at the same time, by which means the form of a second trial is rendered unnecessary. When a coroner's jury have found that a party has murdered the deceased, the coroner may issue his warrant to apprehend him, and may commit him to prison; he has also power to summon witnesses, and bind over persons to prosecute and give evidence. 1 *Chit. Crim. L.* 163, 164.

See 2d Report of Committee on Police of Metropolis, p. 422.

IV. His Power and Duty in other Matters.

Treasure trove. 4 Ed. 1. st. 2.

By stat. 4 *Ed.* 1. *st.* 2. He ought to enquire of treasure that is found; who were the finders, and likewise who is suspected thereof; and that may well be perceived, where one liveth riotously, haunting taverns, and hath done so of long time: hereupon he may be attached for this suspicion by four or six or more pledges, if they may be found.

Executing process.

Besides his judicial place, he hath also an authority ministerial as sheriff; namely, when there is just exception taken to the sheriff, judicial process shall be awarded to the coroner, for the execution of the king's writs; and in some special cases, the king's original writ shall be immediately directed to him. 4 *Inst.* 271. 1 *Blac. Com.* 349.

Outlawry.

He is bound to be present in the county court, to pronounce judgment of outlawry upon the exigent, after *quinto exactus*, at the fifth court, if the defendant doth not appear. *Wood's Inst.* *b.* 4. *c.* 1.

Cannot appoint deputy.

And he ought to execute his office in person, and not by deputy; for he is a judicial officer. *Wood's Inst. b.* 4. *c.* 1. *R.* v. *Ferrand*, *K.B. M.* 60 *G.* 3. *ante*, p. 787. *S. P.*

V. His Fees.

3 H.7. c.1. Fee of 13s. 4d.

By the statute of 3 *H.* 7. *c.* 1. The coroner shall have for his fee, upon every inquisition taken upon the view of the body slain, 13*s.* 4*d.* of the goods and chattels of him that is the slayer or murderer, if he have any goods; and if not, he shall have for his said fee, of such amerciaments as shall fortune any township to be amerced for escape of such murderers. So also stat. 25 *G.* 2. *c.* 29. § 3, 4.

25 G.2. c.29. Fee of 20s. and also 9d. a mile.

Moreover, by stat. 25 *G.* 2. *c.* 29. § 1. For every inquisition (not taken upon view of a body dying in gaol) which shall be duly taken in any township or place contributing to the rates directed by stat. 12 *G.* 2. *c.* 29. (the county-rate act,) he shall have 20*s.* and also 9*d.* for every mile he shall be compelled to travel from his usual place of abode to take such inquisition; to be paid by order of the justices in sessions out of the county rates; for which order no fee shall be paid.

§ 2. And for every inquisition taken on view of a body dying in prison, he shall be paid so much, not exceeding 20*s.*, as the justices in sessions shall allow; to be paid in like manner.

§ 5. But no coroner of the king's household, and of the verge of the king's palaces, nor any coroner of the admiralty, nor of the county palatine of *Durham,* nor of the city of *London* and borough of *Southwark*, or of any franchises belonging to the said city, nor of any city, town, or franchise not contributory to the county rates, or within which such rates have not been usually assessed, shall be entitled to any benefit by this act; but they shall have such fees and salaries as they were allowed before this act, or as shall be allowed by the persons by whom they have been appointed. See *R.* v. *Just. of W. R. of Yorkshire,* 7 *T. R.* 52.

A coroner under stat. 25 G.2. c.29. § 1. is not entitled to any compensation for the miles travelled by him in returning to his usual place of abode *from* taking an inquisition.

R. v. *Just. of Oxfordshire.* 2 *B.* & *A.* 203. A rule having been obtained to show cause why a *mandamus* should not be directed to the justices of *Oxfordshire* to make an order for paying Mr. *Cecil,* one of the coroners for that county, a certain sum of money out of the county rates, being a compensation, at the rate of 9*d.* per mile, for the several miles travelled by him as coroner *in returning to his usual place of abode,* from taking several inquisitions set forth in his affidavit. After argument, *Per Curiam.* The words are, that the coroner shall be allowed 9*d.* per mile, *for every mile he is compelled to travel from the place of his abode to take the inquisition.* The two *termini* are therefore clearly pointed out, and the coroner can only charge for the miles between them. Now the miles he travels in returning are obviously not from his usual place of abode, and therefore there is no pretence for this charge. Besides at the time of the passing of the act (which is the proper period to be considered) this was an ample compensation. Rule discharged with costs.

It is discretionary in the justices whether they will allow the fee under stat. 25 *G.* 2. *c.* 29. § 1.; they are judges whether the inquisition was *duly taken;* and the coroner has not *necessarily* a right to enquire of *all* such deaths as are not natural. *R.* v. *Just. of Kent,* 11 *East,* 229.

In this case, Ld. *Ellenborough* C. J. observed, that there were many instances of coroners having exercised their office in the

most vexatious and oppressive manner, by intruding themselves into private families, to their great annoyance and discomfort, without any pretence of the deceased having died otherwise than a natural death; which was highly illegal.

VI. His Punishment for not doing his Duty.

By stat. 3 *Ed.* 1. *c.* 9. Coroners concealing felonies, or not doing their duty through favour of the misdoers, shall be imprisoned a year, and fined at the king's pleasure.

3 Ed. 1. c. 9.

And by stat. 3 *H.* 7. *c.* 1. If any coroner be remiss, and make not inquisitions upon the view of the body dead, and certify the same to the gaol delivery, he shall forfeit to the king an hundred shillings.

3 H. 7. c. 1.

And by stat. 25 *G.* 2. *c.* 29. § 6. If any coroner, not appointed by an annual election or nomination, or whose office is not annexed to any other office, shall be convicted of extortion or wilful neglect of his duty, or misdemeanor in his office; the court before whom he shall be so convicted may adjudge him to be removed from his office; and thereupon, if he shall have been elected by the freeholders, a writ shall issue for amoving him, and electing another in his stead; and if he hath been appointed by the lord of any liberty or franchise, or in any other manner than by the freeholders, the person entitled to nomination shall on notice of such judgment of amoval nominate another person in his stead.

25 G. 2. c. 29. Coroner removable from his office for extortion or for wilful neglect of duty or misbehaviour.

In Ld. *Buckhurst*'s case, (1 *Keb.* 280.) the coroner not returning his inquisition to the next gaol delivery, but suppressing it, was discharged from his office and fined 100*l*.

If a coroner do not return the depositions and recognisances pursuant to stat. 1 & 2 *P.* & *M.* *c.* 13. (*ante*, p. 788.) the justices of gaol delivery may set such fine upon him as they shall think proper.

The Coroner's Precept to summon a Jury.

County of ——— } To the constable of ———, in the said county.

BY virtue of my office, these are in his majesty's name to require and command you, immediately upon sight hereof, to summon and warn twenty-four good and lawful men of the four next townships to ——— *in the said county, to be and appear before me* A. C., *gentleman, one of the coroners of the county aforesaid, at* ——— *aforesaid, in the said county, on the* ——— *day of* ———, *at* ——— *of the clock, in the* ——— *noon, then and there to enquire of, do, and execute all such things as on his majesty's behalf shall be lawfully given them in charge, touching the death of* A. D. *And be you then there to certify what you shall have done in the premises, and further to do and execute what in behalf of our said lord the king shall be then and there enjoined you. Given under my hand and seal, the* ——— *day of* ———.

The Juror's Oath on the Coroner's Inquest.

YOU shall diligently enquire and true presentment make on the behalf of our sovereign lord the king how and in what manner A. D. [or, *a person unknown*, as the case is,] *here lying dead, came to his death; and of such other matters relating to the same as shall be lawfully required of you, according to your evidence: So help you God.*

After the foreman is sworn, the rest may be sworn, three or four together, as follows:

Such oath as A. F. *the foreman of this inquest hath for his part taken, you and every of you shall well and truly observe and keep on your parts respectively: So help you God.*

Witness's Oath.

THE evidence which you shall give to this inquest, on the behalf of our sovereign lord the king, touching the death of A. D., *shall be the truth, the whole truth, and nothing but the truth: So help you God.*

Inquisition of Murder.

County of } ———— } *AN inquisition indented, taken at —— ——, in the county of ———— aforesaid, the —— day of ————, in the ———— year of the reign of - —, before me* A. C., *gentleman, one of the coroners of our lord the king, for the county aforesaid, upon the view of the body of* A. D., *then and there lying dead, upon the oaths of* A. B., C. D., E. F., *&c., good and lawful men of ———— aforesaid, and of three other of the next towns, to wit,* K., L., *and* M., *in the said county, who being sworn and charged to enquire on the part of our said lord the king, when, where, how, and after what manner, the said* A. D. *came to his death, do say, upon their oath, that one* A. M., *late of ———— aforesaid, gentleman, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, on the ———— day of ————, in the ———— year of ———— aforesaid, at the first hour in the night of the same day, with force and arms, at ———— in the county aforesaid, in and upon the aforesaid* A. D. *then and there being in the peace of God, and of the said lord the king, feloniously, voluntarily, and of his malice forethought, made an assault; and that the aforesaid* A. M., *then and there with a certain sword made of iron and steel, of the value of 5s., which he the said* A. M. *then and there held in his right hand, the aforesaid* A. D. *in and upon the left part of the belly of the said* A. D., *a little above the navel of the said* A. D., *then and there violently, feloniously, voluntarily, and of his malice forethought, struck, and pierced, and gave to the said* A. D., *then and there with the sword aforesaid, in and upon the aforesaid left part of the belly of the said* A. D., *a little above the navel of the said* A. D. *one mortal wound of the breadth of half an inch, and of the depth of three inches, of which said mortal wound the aforesaid* A. D. *then and there instantly died; and so the said* A. M. *then and there feloniously killed and murdered the said* A. D. *against the peace of our said lord the king, his crown and dignity.*

And the said jurors further say, upon their oath aforesaid, that A. A. *of* ———, *yeoman, and* B. A. *of* ———, *yeoman, were feloniously present with drawn swords at the time of the felony and murder aforesaid, in form aforesaid committed, that is to say, on the said* ——— *day of* ———, *in the* ——— *year aforesaid, at* ——— *aforesaid, in the county aforesaid, at the first hour in the night of the same day, then and there comforting, abetting, and aiding the said* A. M. *to do and commit the felony and murder aforesaid, in manner aforesaid, against the peace of our said lord the king, his crown and dignity.*

And, moreover, the jurors aforesaid, upon their oath aforesaid, do say, that the said A. M., A. A., *and* B. A., *had not, nor any of them had, nor as yet have or hath any goods or chattels, lands or tenements, within the county aforesaid, or elsewhere, to the knowledge of the said jurors.* [Or, *And the jurors aforesaid, upon their oath aforesaid, do say, that the said* A. B., *at the time of the doing and committing of the felony and murder aforesaid, had goods and chattels, contained in the inventory to this inquisition annexed, which remain in the custody of* B. C.]

In witness whereof, as well the aforesaid coroner as the jurors aforesaid, have to this inquisition put their seals, on the day and year, and at the place first above mentioned.

A. C. *coroner.*

A. B.
C. D.
E. F., *&c. jurors.*

An Inquisition where one hangs himself.

——— As above to ———, *not having God before his eyes, but being seduced and moved by the instigation of the devil, at* ——— *aforesaid, in a certain wood at* ——— *aforesaid, standing and being, the said* A. D. *being then and there alone, with a certain hempen cord of the value of* 3d. *which he then and there had and held in his hands, and one end thereof then and there put about his neck, and the other end thereof tied about a bough of a certain oak tree, himself then and there, with the cord aforesaid, voluntarily and feloniously and of his malice aforethought hanged and suffocated: And so the jurors aforesaid, upon their oath aforesaid, say, that the said* A. D. *then and there in manner and form aforesaid, as a felon of himself, feloniously, voluntarily, and of his malice aforethought, himself killed, strangled, and murdered; against the peace,* &c.

An Inquisition where one drowns himself.

——— *at* ——— *aforesaid, in the county aforesaid, then and there being alone, in a common river there called* ———, *himself voluntarily and feloniously drowned: And so the jurors, aforesaid, upon their oath aforesaid, say, that the aforesaid* A. D., *in manner and form aforesaid, then and there himself voluntarily and feloniously, as a felon of himself killed and murdered; against the peace* ———.

An Inquisition on one drowned by Accident.

that the said A. D. *on the* ——— *day of* *in the year aforesaid, at the parish and in the county aforesaid,*

going into the river ——, there to bathe himself, it so happened, that accidentally, casually, and by misfortune, he the said A. D. *was in the water of the said river then and there suffocated and drowned, of which said suffocation and drowning he the said* A. D. *then and there instantly died: And so the jurors aforesaid do say, that the said* A. D. *in manner and by the means aforesaid accidentally, casually, and by misfortune, came to his death, and not otherwise. In witness,* &c.

An Inquisition where one dies a Natural Death.

—— *that the said* A. D. *on the* —— *day* ——, *in the year aforesaid, at the parish and in the county aforesaid, to wit, in a certain place called* ——, *was found dead: that he had no marks of violence appearing on his body, and died by the visitation of God, in a natural way, and not otherwise. In witness,* &c.

An Inquisition upon one who dies in a Gaol.

—— *who say upon their oath, that the aforesaid* A. D., *on the day of the taking of this inquisition, being a prisoner in the gaol at* ——, *in the county aforesaid, then and there died of the visitation of God, and then and there in manner and form aforesaid, came to his death and not otherwise. In witness,* &c.

An Inquisition on one *non compos Mentis.*

—— *who say upon their oath, that the aforesaid* A. D., *on the day and year aforesaid, and at the time of his death, to wit, from the* —— *day of* —— *to the time of his death, and at the time of his death aforesaid, was a lunatic and a person of insane mind; and that the said* A. D. *being a lunatic and a person of insane mind as aforesaid, did on the* —— *day of* —— *come alone to a certain river, called* ——, *in the said county, and did then and there cast himself into the said river, and drowned himself in the water of the said river: And so the jurors aforesaid, upon their oath aforesaid, say that the aforesaid* A. D. *from the cause aforesaid, in manner and form aforesaid, came to his death, and not otherwise. In witness,* &c.

An Inquisition on one for cutting his Throat.

—— *by the instigation of the devil, at* —— *aforesaid, in the county aforesaid, in and upon himself then and there being in the peace of God, and of the said lord the king, feloniously, voluntarily, and of his malice aforethought, made an assault: And that the aforesaid* A. D. *then and there with a certain knife of the value of one penny, which he the said* A. D., *then and there held in his right hand, himself upon his throat then and there feloniously, voluntarily, and of his malice aforethought did strike, and gave to himself then and there with the knife aforesaid, upon his throat aforesaid, one mortal wound of the breadth of four inches, and the depth of one inch, of which said mortal wound the said* A. D. *at* —— *aforesaid, in the county aforesaid, languished, and languish-*

ing lived from the said ——— day of ———, in the ——— year aforesaid, to the ——— day of ———, and that the said A. D. *on the ——— day of ——— aforesaid, in the ——— year aforesaid, at ——— aforesaid, in the county aforesaid, of that mortal wound died: And so the jurors aforesaid,* &c.

For killing another in his own Defence.

——— *upon their oaths say, that* A. K., *late of* ———, *gentleman, at ——— aforesaid, in the said county, on the ——— day of ———, in the ——— year of ———, in the peace of God and of our said lord the king then being,* A. M., *late of* ———, *in the county of ———, at the hour of ——— in the afternoon of the same day, did come, and upon him the said* A. K. *then and there, of his malice aforethought, did make an assault, and him the said* A. K. *did then and there endeavour to beat and kill, by continuing the assault aforesaid, from the house of one* W. H. *in ——— aforesaid, to a certain place called ———, in the county aforesaid, and the said* A. K. *seeing that the said* A. M. *was so maliciously disposed, to a certain wall in the said place, called ———, did flee, and from thence for fear of death could not escape, and so the said* A. K. *himself, in preservation of his life, against the said* A. M., *continued to defend, and in his own defence him the said* A. K. *upon the right part of the breast of him the said* A. M. *with a certain sword of the price of one shilling, which the said* A.K. *then and there held in his right hand, did strike, then and there giving to the said* A. M. *one mortal wound, of the breadth of one inch and of the depth of three inches, of which said mortal wound the said* A. M. *at ——— aforesaid, in the county aforesaid, languished, and languishing lived from the said ——— day of ——— to the ——— day of ——— from thence next ensuing, and that the said* A. M. *on the said ——— day of ———, in the ——— year aforesaid, at ——— aforesaid, in the said county, of that mortal wound died; and so the said* A. K. *did then and there kill him the said* A. M. *in his own defence.*

An Inquisition where the Murderer is unknown.

— The same as before, only say, ——— *that a certain person unknown,* &c. and add, ——— *And the said jurors upon their oath aforesaid further say, that the said person unknown, after he had committed the said felony and murder in manner aforesaid, did flee away: Against the peace,* &c.

Corruption of Blood. See **Attainder.**

Costs.

IT seems that in civil proceedings a witness is not obliged to attend unless his expences are tendered to him, pursuant to stat. 5 *El. c.* 9.; and if after such tender he neglect to appear, he may be fined according to the directions of that statute, or

In civil proceedings.

punished by attachment for a contempt of the court, as the circumstances of the case shall appear to be. 2 *Haw.* c. 46. § 173.

In criminal proceedings.

But in criminal proceedings the demands of public justice supersede every consideration of private inconvenience, and witnesses are bound unconditionally to attend the trial upon which they may be summoned, and be bound over to give their evidence. 2 *Haw.* c. 46. § 173. To persons of opulence and public spirit this obligation cannot either be hard or injurious, but indigent witnesses grew weary of expensive attendance, and frequently bore their own charges to their great hinderance and loss; and Ld. *Hale* complains of the want of power in judges to allow witnesses their charges as a great defect in this part of judicial administration. 2 *Hale*, 282.

To remedy this defect several legislative provisions have been enacted, *viz.* 25 *G.* 2. c. 36. § 11. — 27 *G.* 2. c. 3. § 3. — 18 *G.* 3. c. 19. § 7, 8.; but the most recent and comprehensive statute upon this subject is 58 *G.* 3. c. 70. passed for abolishing the rewards on conviction of certain offenders, under stats. 4 *W.* & *M.* c. 8. — 6 & 7 *W.* 3. c. 17. — 5 *Ann.* c. 31. — 14 *G.* 2. c. 6. — 15 *G.* 2. c. 28., and for facilitating the means of prosecuting persons accused of felony and other offences.

58 G. 3. c. 70. Court empowered to order payment of expences of prosecution.

§ 4. of stat. 58 *G.* 3. c. 70. Is to the following effect: — "And whereas many persons are deterred from prosecuting persons guilty of felony, upon account of the expence and loss of time attending such prosecutions, whereby the ends of justice are frequently defeated; be it therefore enacted, by the authority aforesaid, that from and after the passing of this act it shall and may be lawful for the court, before whom any person shall be prosecuted or tried for any grand or petit larceny or other felony, and every such court is hereby authorised and empowered, at the request of the prosecutor, or any other person or persons who shall become bound in any recognisance to H. M., his heirs and successors, to prosecute or give evidence, or who shall be subpœnaed to give evidence, against any person or persons accused of any grand or petit larceny or other felony, and who shall appear to prosecute and give evidence, or who shall appear to the said court to have been active in the apprehension of any person or persons accused of any of the offences in the said hereinbefore recited acts mentioned, or any of them, to order the sheriff or treasurer of the county in which the offence shall have been committed, to pay unto such prosecutor and witnesses, and person or persons concerned in such apprehension as aforesaid, respectively, as hereinafter mentioned, as well the costs, charges, and expences which such prosecutor shall be put to in preferring the indictment or indictments against the person or persons so accused, as also such sum and sums of money as to the said court shall seem reasonable and sufficient to reimburse such prosecutor and witnesses, and person or persons concerned in such apprehension as aforesaid, for the expences they shall have been put severally to in attending before the grand jury to prefer such indictment or indictments, and in otherwise carrying on such prosecution, and also compensate such prosecutor and witnesses, and person or persons concerned in such apprehension as aforesaid, respectively, for their loss of time and trouble in such apprehension and prosecution as aforesaid."

And by § 5. "In case the said judge, justices, or court shall make any order and direction for the payment of any such sum or sums of money to any person or persons *concerned in the apprehension and taking of any person or persons accused* of any of the offences in the said hereinbefore recited acts mentioned, or any of them, the same shall be paid by the sheriff of the county in which the offence shall have been committed; and in the like manner, upon the like certificate, and at the same period of time, as the rewards are directed to be paid by the said recited acts of 4 *W.* & *M.* 6 *W.* 3. 5 *Ann.* 3* & 14 & 15 *G.* 2.; and every such certificate shall be made out by the clerk of assize or clerk of the peace respectively, and be forthwith delivered to the person or persons entitled to the same, upon payment of the sum of 5*s.* for each such certificate; and the sheriff of the county, upon payment of the sum of money specified in such certificate, shall be reimbursed the said sum of money, in like manner as is directed by the said several and respective acts hereinbefore recited."

58 G. 3. c. 70. To be paid by the sheriff of the county.

(*a*) *Sic.* in stat.

§ 6. "And every such order for the costs and charges assigned by this act to prosecutors and witnesses shall be made out by the clerk of assize or clerk of the peace respectively, which order the clerk of assize or clerk of the peace is hereby directed and required forthwith to make out and deliver unto such prosecutor, upon being paid for the same the sum of 1*s.*, and no more; and the treasurer of the said county, riding, or division is hereby authorised and required, upon sight of such order, forthwith to pay to such prosecutor, or other person authorised to receive the same, such money as aforesaid, and shall be allowed the same in his account."

The order for costs to be mad by the clerk of assize, and to be paid by the treasurer of th county.

§ 7. "Whereas by an act of parliament made and passed in the 25th year of the reign of his late majesty king *George* the second, intituled "*An act for preventing thefts and robberies, and for regulating places of public entertainment, and punishing persons keeping disorderly houses,*" it is amongst other things enacted, that if any two inhabitants of any parish or place, paying scot and bearing lot therein, do give notice in writing to any constable, or other peace officer of the like nature where there is no constable of such parish or place, of any person keeping a bawdy-house, gaming-house, or any other disorderly house in such parish or place, the constable or such officer as aforesaid so receiving such notice shall forthwith go with such inhabitants to one of H. M.'s justices of the peace of the county, city, riding, division, or liberty in which such parish or place doth lie, and shall, upon such inhabitants making oath before such justice that they do believe the contents of such notice to be true, and entering into a recognizance in the penal sum of 20*l.* each to give or produce material evidence against such person for such offence, enter into a recognizance in the penal sum of 30*l.* to prosecute with effect such person for such offence at the next general or quarter sessions of the peace, or at the next assizes to be holden for the county in which such parish or place does lie, as to the said justice shall seem meet; and whereas it is expedient, that when any two inhabitants of any parish or place, paying scot and bearing lot therein, shall give notice in writing to any constable of such parish or place of any person keeping a bawdy-house, gaming-house, or any other disorderly house, in such parish or place,

Notice by 25 G. 2. c. 36. directed to be given to constables in certain cases.

58 G.3. c.70.

to be given also to the overseers of the poor;

that the overseers of the poor of such parish or place shall have notice thereof;" it is therefore enacted, "that a copy of the notice which shall be given to such constable shall also be served on or left at the places of abode of the overseers of the poor of such parish or place, or one of them, and such overseers or overseer of the poor shall be summoned, or have reasonable notice to attend before such justice of the peace, before whom such constable shall have notice to attend; and if such overseers or overseer of the poor shall then and there enter into such recognisance to prosecute such offender as the constable is in and by the said act required to enter into, then it shall not be necessary for, nor shall such constable be required to enter into such recognisance; but if such overseers or overseer of the poor shall neglect to attend such justice on having such notice, or shall attend, and shall decline or refuse to enter into such recognisance to prosecute, then such constable shall enter into the same, and shall prosecute, and shall be entitled to his expences, to be allowed as in and by the said act is directed."

who are to prosecute.

To whom costs shall be paid.

§ 8. No person shall be entitled to any such costs or expences for attending the court, unless he shall have been bound by recognisance, or have previously received a subpœna to attend the same, or a written notice for that purpose from the prosecutor, his agent, or his attorney.

In places which do not contribute to the county rate, and have no public stock, a separate rate to be levied for the purposes of this act.

§ 9. " And whereas there are several cities, towns corporate, and places which do not contribute to the payment of any county rate, and have no town rate or public stock; and doubts may arise whether such cities, towns corporate, and places can be legally rated and assessed towards the payments by this act directed to be made; be it therefore enacted, that in all such cases the said costs, charges, expences, sum and sums of money, and compensations shall be raised, levied, collected, and paid within such cities, towns corporate, and places, by a separate rate and assesment to be made by the churchwardens and overseers of the poor of the several parishes and precincts within such cities, towns corporate, and places, and by such and the like ways, methods, and means as the rates for the relief of the poor are, can, or may be raised, levied, and collected in such cities, towns corporate, and places."

Where sums are too small to be raised by a separate rate, such sums shall be paid out of the poor's rate.

§ 10. " And whereas it may happen that the sums of money to be raised in the said cities, towns corporate, and places, or some or one of them, for the payments by this act directed to be made, may be so small that it may not be convenient to make an equal separate rate and assessment for the same upon the said parishes and precincts within such cities, towns corporate, and places; be it enacted, that in such last-mentioned case, and when and so often as the same shall happen, the said costs, charges, expences, sum and sums of money, and compensations, shall and may, by order of the said court before whom any such person may be tried as aforesaid, be paid out of the monies from time to time raised for the relief of the poor in the said several cities, towns corporate, and places, and the treasurers, or persons from time to time having the management of the said monies raised for the relief of the poor in the same cities, towns corporate, and places respectively, are hereby authorised and required to pay the said sums of money so ordered to be paid as aforesaid out of the said last-mentioned

monies, when and as often as the same shall be so ordered: provided always, that should there be more parishes than one in the same district, the payments are to be made and levied in such rates and proportions as the respective parishes pay to the poor rate."

R. v. *The Treasurer of the County of Surrey, M.* 60 *G.* 3. 1 *Chitt. Rep.* 650. Motion for a rule to show cause why a *mandamus* should not issue to defendant, commanding him to pay the sum of 5*s.* to one *Kinsey*, pursuant to an order of the borough sessions, on stat. 58 *G.* 3. *c.* 70., as an allowance for his expences as a witness in attending a prosecution for felony. The court said that they could not interfere by *mandamus*. The proper remedy was either by attachment against the treasurer in the borough court, or by indictment at common law for disobeying the order. This latter remedy was the most proper, and they referred to *R.* v. *Johnson*, 4 *M.* & *S.* 515. as a case in point. *R. R.* See also 1 *Chitt. Crim. L.* 825, 826, 827, 828.

Mandamus to a county treasurer, to pay costs, refused.

Justices of the peace at the quarter sessions have no authority to order the costs of a prosecution for a misdemeanor (*e.g.* for refusing to assist a constable in the execution of his duty) carried on under the direction of magistrates, to be allowed out of the county rates. *R.* v. *West Riding of Yorkshire*, 7 *T. R.* 377. (*a*)

Costs of prosecutions for misdemeanors. 32 G. 3. c. 57.

See also *R.* v. *Bird and Others, ante*, p. 584.

But by 32 *G.* 3. *c.* 57. § 11. One moiety of the expences of prosecuting a master for ill treating his parish apprentice may be paid out of the county rates. *Vide ante, tit.* Apprentices, p. 172.

32 G. 3. c. 57.

The costs of a prosecution, in the borough court of *Liverpool*, for a felony committed within that borough, may be ordered by the court to be paid by the treasurer of the county of *Lancaster*, the borough of *Liverpool* not having exclusive jurisdiction, nor any treasurer like a county treasurer, nor any rate in the nature of a county rate, but contributing as a part of the county to the county rate. *R.* v. *Johnson*, 4 *M.* & *S.* 515.

By stat. 18 *G.* 3. *c.* 19. § 1. Whereas by the laws now in being justices of the peace are not sufficiently authorised, on complaints that come before them out of sessions, to award costs against either the person complaining, or the person against whom any complaint is made, it is therefore enacted, that where any complaint shall be made before any justice or justices, and any warrant or summons shall issue in consequence thereof, it shall be lawful for such justice, who shall have heard and determined the matter of the complaint, to award (A) such costs to be paid by either party, and in manner and form as to him shall seem fit, to the party injured. And in case any person so ordered by the justice shall not forthwith pay or give security for the same to the satisfaction of the justice, the same shall be levied by distress (B); and if goods and chattels of such person cannot be found (C), the justice shall commit him (D) to the house of correction for the place where such person shall reside, to be kept to hard labour not exceeding one month, nor less than ten days, or until such

18 G. 3. c. 19. Justices may award costs.

(A)

(B)

(C)

(D)

(*a*) N. B. Shortly after this decision Mr. *Wilberforce* brought a bill into the House of Commons, empowering courts to allow costs in cases of misdemeanor to be paid from county rates; but the bill was strongly opposed, and ultimately withdrawn.

18 Geo. 3. c. 19.

sum, together with the expences attending the commitment, be first paid.

Except where the penalty amounts to 5*l.* or upwards.

§ 2. Provided, that upon the conviction of any person upon any penal statute, where the penalty shall amount to, or exceed the sum of 5*l.*, the said costs shall be deducted by the justice, according to his discretion, out of the penalty, so that the said deduction shall not exceed one-fifth part of the penalty; and the remainder of the penalty shall be paid to or divided among the person or persons who would have been entitled to the whole of the penalty, if this act had not been made.

[But in several instances even where the penalty exceeds 5*l.* the act of parliament creating the penalty also gives costs.]

Sessions to make regulations.

§ 9. And the justices in sessions from time to time may lay down or alter such rules and regulations as to any costs or charges to be allowed to any person by virtue of this act, as to them shall seem just; which rules and regulations, having received the approbation and signature of one or more of the judges of assize, shall be binding, and not otherwise, on all persons whatsoever. (*a*)

Where in an action against officers of the excise for seizing goods they do not tender amends before action brought, but pay money into court, and afterwards gain a verdict, (the jury finding that the sum paid in was sufficient,) they are entitled to *single* costs only under the 23 *G.* 3. *c.* 70. § 31. Whether they would have been entitled to treble costs under § 34. of the act, had they tendered amends, was a question not involved in this decision, and which it would be time enough to determine, the court said, when it actually arose. *Collins* v. *Morgan*, 1 *H. Blac.* 244.

Parish officers, &c. are not entitled to double costs upon judgment, as in case of a nonsuit in an action brought against them for the price of goods sold and delivered to them for the use of the poor, under stats. 7 *Jac.* 1. *c.* 5. and 21 *Jac.* 1. *c.* 12. *Blanchard* v. *Bramble*, 3 *M.* & *S.* 131.

Where an act of parliament gives treble damages for a cause of action, for which at common law a party would only be entitled to single damages, treble costs follow as of course. *Deacon* v. *Morris*, 2 *B.* & *A.* 393.

Costs of distress. See *post. tit.* Distress, § XI.

Power of sessions to allow costs in prosecutions of vagrants. See stat. 5 *G.* 4. *c.* 40. § 83. *post, tit.* Vagrants.

The following forms are inserted in stat. 18 *G.* 3. *c.* 19. and by the third section directed to be used.

A. Form of awarding Costs.

County or Borough, &c. ——— to wit. } *I* A. J., *one of his majesty's justices of the peace in and for the* ——— *aforesaid, in pursuance of an act made in the eighteenth year of his majesty king* George *the third, intituled,* "An act for the payment of costs to parties, on complaints determined before justices of the

(*a*) This section seems merely to authorise magistrates to establish a general table or rate of costs which shall be applicable to all cases, if they shall please; and if they do so, such order, confirmed as the act requires, is binding in all future cases; but until that is done, they have a right to award costs under the first section, according to their own discretion. — *Ed.*

peace out of sessions; for the payment of the charges of constables in certain cases; and for the more effectual payment of charges to witnesses and prosecutors of any larceny or other felony;" *on the complaint of* ——— [here state the names of the parties, and the offence generally, and the date,] *against* ———, *for* ———, *which said complaint was heard and determined by me on the* ——— *day of* ———, *Do award the following costs to be paid by* ———, *videlicet* [here state the costs]. *Given under my hand and seal this* ——— *day of* ———, *in the year of our Lord* ———.

18 G.3. c.19.

B. Form of Warrant of Distress and Sale.

B.

——— } To the constable of ———, and to all other his
to wit. } majesty's constables in and for ———, in ——— aforesaid. *Whereas* [*I*, J. P. *esquire*,] *one of his majesty's justices of the peace in and for the* ——— *aforesaid, in pursuance of an act made in the eighteenth year of his majesty king* George *the third, intituled* " An act for the payment of costs to parties, on complaints determined before justices of the peace out of sessions; for the payment of the charges of constables in certain cases; and for the more effectual payment of charges to witnesses and prosecutors of any larceny or other felony;" *have awarded on the* ——— *day of* ——— *now last past, on the complaint of* ———, *against* ———, *for* ———, *the following costs to be paid by* ———; *videlicet* [here state the sum]: *And whereas the said* ———, *being ordered by me the said justice to pay such sum as aforesaid, hath not paid down or given security for the same to the satisfaction of me the said justice; these are therefore to command you, and each and every of you, to levy the said sum of* ———, *by distress and sale of the goods and chattels of the said* ———; *and I do hereby order and direct the goods and chattels so to be distrained to be sold and disposed of within* ——— *days, unless the said sum of* ———, *for which such distress shall be made, together with the reasonable charges of taking and keeping such distress, shall be sooner paid; and you are hereby also commanded to certify unto me what you shall have done by virtue of this my warrant. Given under my hand and seal at* ———, *the* ——— *day of* ———, *in the year of our Lord* ———.

C. Constables's Return thereon, for Want of Distress.

——— } *I* ———, *constable of* ———, *do hereby certify to*
to wit. } ———, *justice of the peace of* ———, *that I have made diligent search for, but do not know, nor can find any goods and chattels of* ———, *by distress and sale whereof I may levy the sum* [*of* ———,] *pursuant to his warrant for that purpose, dated the* ——— *day of* ———. *Given under my hand, this* ——— *day of* ———, *in* ———.

D. D. Commitment thereupon to the House of Correction.

——— } To the constable of ———, and also to the keeper of
to wit. } the house of correction at ———.

Whereas, in pursuance of an act made in the eighteenth year of his majesty king George *the third, intituled* "An act for the payment of costs to parties, on complaints determined before justices of the peace out of sessions; for the payment of the charges of constables in certain cases; and for the more effectual payment of charges to witnesses and prosecutors of any larceny or other felony," ——— *of his majesty's justices of the peace in and for the said* ———, *did issue* ——— *warrant of distress and sale, directed to* ——— *of* ———, *constable of the said* ——— *of* ———, *ordering the said constable to levy the said sum of* ———, *of the goods and chattels of the said* ——— *in manner and form as therein is mentioned: and whereas it appears to* ———, *by the return of* ———, *constable of* ———, *dated the* ——— *day of* ———, *that he hath made diligent search, but doth not know of, nor can find any goods and chattels of the said* ——— *by distress and sale whereof the said sum of* ——— *may be levied pursuant to the said warrant; These are therefore to command you, the said constable of* ———, *to apprehend the said* ———, *and convey the said* ——— *to the said house of correction at* ———, *and to deliver the said* ——— *there to the said keeper of the said house of correction: and these are also to command you, the said keeper of the said house of correction, to receive the said* ——— *into the said house of correction, and there keep to hard labour for the space of* ——— *from the date hereof, or until such sum of* ———, *together with the expences attending the commitment of the said* ——— *to the said house of correction be first paid, or until the said* ——— *be discharged by due course of law. Given under* ——— *hand and seal,* (or, *hands and seals,*) *at* ———, *the* ——— *day of* ———.

Cottages.

COTTAGE (Sax. *Cote,*) is a small house for habitation, without any land belonging to it. By stat. 31 *El. c.* 7. cottages were prohibited to be erected without laying at least four acres of land to the same, and divers other restrictions were thereby enjoined: but the same was repealed by stat. 15 *G.* 3. *c.* 32. setting forth that the said statute of 31 *El.* had laid the industrious poor under great difficulties to procure habitations, and tended very much to lessen population, and in divers other respects was inconvenient to the labouring part of the nation in general.

Cotton and Woollen Mills.

[42 G. 3. c. 73. — 59 G. 3. c. 66. — 60 G. 3. c. 5.]

STAT. 42 *G.* 3. *c.* 73. intituled "*An act for the preservation of the health and morals of apprentices and others employed in cotton and other mills, and cotton and other factories,*" enacts, § 1. that from 2d *December*, 1802, all cotton and woollen mills, and cotton and woollen factories, wherein three or more apprentices or twenty or more other persons shall at any time be employed, shall be subject to the several rules and regulations contained in this act; and the master or mistress of every such mill or factory is strictly enjoined to act in strict conformity to the said rules and regulations.

42 G. 3. c. 73.

Mills and factories, employing a certain number of persons, subjected to the regulations of this act.

§ 2. Every room and apartment belonging to such mill or factory shall, twice at least in every year, be sufficiently washed with quick lime and water over every part of the walls and ceiling thereof, and due care shall be paid by the master or mistress of such mills or factories to provide a sufficient number of windows and openings in such rooms or apartments, to insure a proper supply of fresh air in and through the same.

White washing and airing the rooms.

§ 7. The room or apartment in which any male apprentice shall sleep shall be entirely separate and distinct from that in which any female apprentice shall sleep; and not more than two apprentices shall in any case sleep in the same bed.

Apartments and beds of male and female apprentices.

§ 3. Ever master or mistress shall constantly supply every apprentice during the apprenticeship with two complete suits of clothing, with suitable linen, stockings, hats, and shoes; one new complete suit being delivered to such apprentice once at least in every year.

Clothing of apprentices.

§ 4. No apprentice to any such master or mistress shall be employed or compelled to work for more than twelve hours in any one day (reckoning from six of the clock in the morning to nine of the clock at night), exclusive of the time that may be occupied by such apprentice in eating the necessary meals; provided that from the 1st of *June*, 1803, no apprentice shall be employed or compelled to work upon any occasion whatever between nine at night and six in the morning.

Time of working.

Night work.

§ 6. Every such apprentice shall be instructed in some part of every working day, for the first four years at least of his or her apprenticeship, in the usual hours of work, in reading, writing, and arithmetic, or either of them, according to the age and abilities of such apprentice, in some room or place in such mill or factory, to be set apart for that purpose; and the time so allotted shall be deemed part of the respective periods limited by this act during which any such apprentice shall be employed or compelled to work.

Apprentices to be instructed in reading, writing and arithmetic.

§ 8. Every apprentice (or in case the apprentices shall attend in classes, every such class,) shall, for one hour at least every *Sunday*, be instructed and examined in the principles of the Christian religion by some proper person to be provided and paid by the master or mistress of such apprentice; and if the parents of such apprentice shall be members of the church of *England*, then

Instruction and conduct of apprentices on Sundays.

42 G.3. c.73.

such apprentice shall once a year at least be examined by the rector, vicar, or curate of the parish in which such mill or factory is situated, and shall also, after such apprentice is fourteen years old and before his eighteenth year, be prepared for confirmation, and be brought or sent to the bishop to be confirmed, in case any confirmation shall during such period take place in or for such parish, and such master or mistress shall send their apprentices under proper care once in a month at least to attend divine service in the church of the parish or place in which the mill or factory shall be situated, or in some convenient church or chapel according to the established church, or in some licensed place of public worship; and in case the apprentices cannot conveniently attend service every *Sunday*, the master or mistress shall cause divine service to be performed in some convenient room or place in or adjoining to the mill or factory, once at least every such *Sunday*.

Justices at their Midsummer sessions yearly to appoint two visitors of such mills or factories, who shall visit and report the condition thereof to the quarter sessions.

§ 9. The justices for every county, riding, division, or place in which any such mill or factory shall be situated, shall at the *Midsummer* sessions appoint two persons not connected with such mills or factories to be visitors thereof, one of whom shall be a justice of the peace for such county, &c. and the other a clergyman of the established church; and if such appointment be found inconvenient, such justices shall appoint two such justices or two such clergymen; and the said visitors or either of them may from time to time throughout the year enter and inspect any such mill or factory during daytime or the hours of employment; and shall report from time to time, in writing, to the sessions the state and condition of such mills and factories, and the apprentices therein, such report to be entered by the clerk of the peace among the records of the sessions in a book kept for that purpose: provided, that if six or more mills or factories be within any one such county, &c. then such justices may divide such county, &c. into two or more districts or parts, and appoint two such visitors as aforesaid for each of such districts or parts.

Visitors may be appointed for districts.

In case of infectious disorders, visitors may require the master, &c. to call in medical assistance, &c.

§ 10. And if the said visitors or either of them shall find that any infectious disorder prevails in any mill or factory as aforesaid, they or he may require the master or mistress of such mill or factory to call in some physician or other competent medical person to ascertain the nature, &c. of such disorder, and apply such remedies and recommend such regulations as he shall think proper on the occasion; and such medical person shall report to the visitors or either of them, as often as required, his opinion in writing of the nature, progress, and present state of the disorder, together with its probable effects and any expences incurred in consequence thereof shall be discharged by the master or mistress of such mill or factory.

Penalty, for obstructing visitors.

§ 11. If any one shall oppose or molest any of the said visitors in the execution of the powers of this act, every such person shall for every offence forfeit not more than 10*l*. nor less than 5*l*.

Penalty on masters, &c. offending.

§ 13. And every master or mistress of such mill or factory who shall offend against any of the provisions of this act shall for such offence (except where otherwise directed) forfeit not more than 5*l*. nor less than 40*s*. at the discretion of the justices before whom such offender shall be convicted, as after mentioned; one half to

the informer, and the other to the poor: such information to be laid within one calendar month after the offence is committed.

42 G.3. c.73. Limitation one month.

§ 15. All offences for which any penalty is hereby imposed shall be heard before two justices acting in and for the place where the offence shall be committed, and all penalties, and costs, and charges attending the conviction may be levied by distress by warrant of two justices acting for the county, &c. rendering the overplus (if any) to the party offending; which warrant they are required to grant on conviction, either upon confession or upon the oath of one witness, and in case no distress can be found, or such penalties, &c. be not paid, such justices shall by warrant commit the offender to the common gaol or house of correction of the county, &c. where the offence shall be committed, for any time not exceeding two calendar months, unless the penalty, &c. be sooner paid; provided that no warrant of distress shall be issued for such penalty, &c. until six days after conviction, and an order made on the offender for payment thereof; and no such conviction shall be removeable by *certiorari* into any court.

Penalties recoverable before two justices, &c.

No certiorari.

§ 12. The master or mistress of every such mill or factory shall cause printed or written copies of this act to be hung up and affixed in two or more conspicuous places in such mill or factory; the same to be constantly kept, and renewed so as to be at all times legible and accessible to all persons employed therein.

Two copies hereof to be affixed in the mill.

§ 14. Every such master or mistress shall, at the *Epiphany* sessions yearly, make or cause to be made, an entry in a book to be kept for that purpose by the clerk of the peace of every county, &c. in which such mill or factory shall be situate, of every such mill or factory occupied by him or her, wherein three or more apprentices, or twenty or more other persons, shall be employed; and the said clerk shall receive for every such entry 2*s.* and no more.

§ 16. Every such conviction before such justices may be made in the following form; (to wit,)

Conviction.

County of —— } to wit. } *BE it remembered, that on the —— day of ——, in the year ——,* A. B. *was, upon the complaint of* C. D., *convicted before —— of the justices of the peace for the said county of ——,* [or, *for ——, of or in the said county of ——,* as the case shall happen to be,] *in pursuance of an act passed in the forty-second year of the reign of his majesty king* George the *third, for* [or, as the case may be]. *Given under our hands and seals, the day and year above written.*

Which conviction shall be certified to the next general quarter sessions, there to be filed amongst the records of the county, riding, or division.

§ 17. And the act is a public act.

By stat. 59 *G.* 3. *c.* 66. After reciting stat. 42 *G.* 3. *c.* 73. and that it is expedient that some further provision should be made for the regulation of mills, manufactories, and buildings employed in the preparation and spinning of cotton wool; it is enacted, that from and after the first of *January*, 1820, "no child shall be employed in any description of work, for the spinning of cotton wool into yarn, or in any previous preparation of such

59 G.3. c.66.

No child to be employed in cotton mills under nine years of age.

59 G.3. c.66.

wool, until he or she shall have attained the full age of nine years."

No person under 16 years of age to be employed in any cotton mill, &c. for more than 12 hours.

§ 2. "No person, being under the age of sixteen years, shall be employed in any description of work whatsoever, in spinning cotton wool into yarn, or in the previous preparation of such wool, or in the cleaning or repairing of any mill, manufactory, or building, or any millwork or machinery therein, for more than twelve hours in any one day, exclusive of the necessary time for meals; such twelve hours to be between the hours of five o'clock in the morning and nine o'clock in the evening."

Hours of meal time appointed.

§ 3. "There shall be allowed to every such person, in the course of every day, not less than half an hour to breakfast, and not less than one full hour for dinner; such hour for dinner to be between the hours of eleven o'clock in the forenoon and two o'clock in the afternoon."

Time to be made up by accidental intermission after the rate of an additional hour per day.

§ 4. "If at any time, in any such mill, manufactory, or buildings as are situated upon streams of water, time shall be lost in consequence of the want of a due supply, or of an excess of water, then and in every such case, and so often as the same shall happen, it shall be lawful for the proprietors of any such mill, manufactory, or building, to extend the before-mentioned time of daily labour, after the rate of one additional hour *per* day, until such lost time shall have been made good, but no longer."

Ceilings and walls to be cleansed twice a year.

§ 5. "The ceilings and interior walls of every such mill, manufactory, or building, shall be washed with quick lime and water twice in every year."

Publication of this act in every cotton mill, &c.

§ 6. "In a conspicuous part of every such mill, manufactory, or building, a copy of this act, or a full and true abstract of the regulations provided hereby, shall be hung up and affixed, and signed by the proprietors, manager, or overseer of such mill, manufactory, or building; and such copy or abstract shall be kept and renewed, so that the same shall be at all times legible."

Penalty on acting contrary to the provisions of this act.

§ 7. "Every master or mistress of any such cotton mill, manufactory, or building, who shall wilfully act contrary to or offend against any of the provisions of this act, or any of the provisions of the above-recited act, shall for every such offence forfeit and pay any sum not exceeding 20*l*., nor less than 10*l*., at the discretion of the justices before whom such offender shall be convicted; one half whereof shall be paid to the informer, and the other half to the overseers of the poor in *England*, to the churchwardens in *Ireland*, and to the ministers and elders in *Scotland*, of the parish or place where such offence shall be committed; to be by them applied in aid of the poor-rate in *England*, and for the benefit of the poor in *Ireland* and *Scotland*, of such parish or place: provided that all informations for offences against the said recited act or this act shall be laid within three calendar months subsequently to the offence being committed, and not after the expiration of such three calendar months: provided also, that all penalties inflicted by this act shall be levied, recovered, and applied in manner directed by the said recited act."

Application of penalties.

Limitation of actions.

60 G.3. c.5.

By stat. 60 *G*. 3. *c*. 5. After reciting stat. 59 *G*. 3. *c*. 66., "and whereas it is expedient to provide for accidents by fire or otherwise, which may arise in the working of such mills or factories, by which many persons may be suddenly deprived of employ-

ment, and to alter the said act:" it is therefore enacted, "that on the event of one or more mills being suddenly destroyed by fire or other accident, the proprietors thereof, possessing other mills which are kept at work during the day, shall, for eighteen months from the day on which any such fire or other accident shall happen, be allowed to employ the persons who were previously at work on the mill or mills so destroyed, and employ them in the night-time in any other mill or mills, for any period not exceeding ten hours in any one night."

60 G. 3. c. 5. In case of mills being destroyed, persons belonging to them may be employed by night in other mills.

§ 2. And whereas it is by the said act enacted, that there shall be allowed to every person, in the course of every day, not less than half an hour to breakfast, and not less than one full hour for every dinner: such hour for dinner to be between eleven of the clock in the forenoon and two of the clock in the afternoon: and whereas it is expedient that the period thereby specified for the hour of dinner should be altered; it is therefore enacted, that such hour for dinner shall be between the hours of eleven of the clock in the forenoon and four of the clock in the afternoon.

Hour for dinner to be between eleven and four.

§ 3. This declared to be a public act.

Public Act.

Disputes between masters and workmen in Cotton and Woollen Manufactories. See Servants. Vol. V.

County.

IF a person who hath committed an offence in one county fly into another before he be taken, and be pursued and arrested in such county, he ought to be brought before a justice of the county where he is taken, and be committed by him to the common gaol of the same county, &c. 2 *Haw. c.* 16. § 8.

But as he must be indicted in the county where the offence was committed, it is necessary that he should, before trial, be removed by *habeas corpus ad deliberandum et recipiendum*. See 3 *Bac. Abr.* 422. which describes this writ as lying to remove a person to the proper place or county where he committed some criminal offence, and recites 2 *Hale*, 37. "that justices of gaol delivery may send prisoners by *habeas corpus* to the sheriff of another county, and a precept to the sheriff of that other county to receive them, namely, for a felony committed in that county, *though that county be out of the circuit of the justice that sends them.*" This power in justices of gaol delivery is, perhaps, a consequence of their commission, as it directs them to deliver the gaol, and impliedly gives them every authority necessary for that purpose. But justices at sessions have no commission of gaol delivery, and therefore the same argument will not apply to them.

Stat. 31 *C.* 2. *c.* 2. § 9. Expressly prohibits the removal of any prisoner except in certain cases, (one of which is "where the prisoner is removed from one prison or place to another *within the same county*, in order to his trial,) unless it be by *habeas corpus*, or some other legal writ. And the justices of peace cannot grant a *habeas corpus*, or any other writ, (it is apprehended,) calculated for such purpose.

31 C. 2. c. 2.

See the form of a writ of *habeas corpus ad deliberandum* in the Register of Writs, p. 74. b.

See titles Commitment, Distress, XX. Examination, Homicide, Indictment, Justices of the Peace, Process, Warrant.

County Court.

[11 H. 7. c. 15.—2 & 3 Ed. 6. c. 25.—12 G. 2. c. 13.]

County.

ANCIENTLY, the *comites, counts,* or *earls,* had the government of the counties; and afterwards the *vice-comites,* or *sheriffs.* And the *county* seemeth to be nothing else but the district of the *comes* or *count.* *Shire* is a *Saxon* word, from *scyran,* to share or divide, for that the shires and counties are divided by certain metes and bounds from each other. And the *sheriff,* in Saxon *syregeresa,* is the *reve, grave,* or governor of the *shire;* wherein he hath great power, being therein the chief officer under the king.

County court.

The sheriff holdeth in his county two courts; the *torn* and the *county court.* The *torn* is the king's court of record for criminal causes, and for redressing of common grievances within the county; the *county court* is not a court of record, but only a court baron, for civil causes, and this is the court of the sheriff himself.

2 & 3 Ed. 6. c. 25. When to be holden.

By stat. 2 & 3 *Ed.* 6. *c.* 25. No county court shall be longer deferred than one month from court to court, so that the county court shall be kept every month, and not otherwise.

And this is to be accounted twenty-eight days to the month, and not according to the month of the calendar. 2 *Inst.* 71.

Where to be kept.

It may be kept at any place within the county, unless restrained by statute. *Wood's Inst. b.* 4. *c.* 1.

How far the sheriff is judge.

The suitors, that is, the freeholders, are the judges in this court; except that in re-disseisin, by the statute of *Merton,* the sheriff is judge. And by the statutes concerning parliamentary elections, he is judge at the election of knights; for he must make a true return at his peril. *Barl.* County Court.

Of what sum this court hath cognisance.

This court shall hold pleas betwixt party and party, where the debt or damage is under 40*s.* 4 *Inst.* 266.

But in a *replevin,* the sum may be above 40*s.* 4 *Inst.* 266.

Of what offences this court hath cognisance.

Also it hath not cognisance of trespass *vi et armis,* because a fine is thereby due to the king, which it cannot impose. 4 *Inst.* 266.

The cause of action must arise, and the defendant reside within the county.

But no action can be brought in the county court, unless the cause of action arise, and the defendant reside within the county; and where that is not the case, the action may be brought in the courts above, although for a less sum than 40*s.* For if the action cannot be brought in the inferior jurisdiction, the plaintiff is not therefore to lose his debt; but he must sue in the superior courts. *Welch* v. *Troyte,* 2 *H. Black.* 29. *Tubb* v. *Woodward,* 6 *T. R.* 175.

11 H. 7. c. 15. No plaint for

By stat. 11 *H.* 7. *c.* 15. No plaint shall be entered in the county court, but where the plaintiff or his attorney is present; and the

plaintiff shall find pledges to pursue his plaint; and he shall have but one plaint for one trespass or contract; on pain of 40*s*., half to the king, and half to the prosecutor. And one justice may examine the sheriff, or other officer making default; and shall, within a quarter of a year, certify the examination into the exchequer.

11 H. 7. c. 15.

one trespass or contract.

But as to the pledges above mentioned, they are now disused in this court, and were formerly used only in cases where the plaintiff lived out of the county. *Greenw.* 11. *Read.* County Court.

And by virtue of a writ of *justices* the court may hold plea of trespass *vi et armis*, and of any sum, or of all actions personal above 40*s*. For this writ is in the nature of a commission to the sheriff, for the sake of dispatch, to do the same *justice* in this county court, as might otherwise be had in the courts at *Westminster*. 4 *Inst.* 266.

Writ of justices.

By looking into any of the treatises on the county court, it will be seen that that court is considered in the nature of a court baron. The writ of *justices*, giving power to this court to hold pleas above 40*s*. in some instances, does not alter the nature of this court. This is not a court *proprio vigore* holding pleas of above 40*s*., and therefore is not within the meaning of stat. 25 *G.* 3. *c.* 80., which gives a penalty against attornies prosecuting or defending without a certificate any suit in any court holding pleas where the debt or damage shall amount to 40*s*. or more. *Cross* v. *Kaye*, 6 *T. R.* 663.

By stat. 12 *G.* 2. *c.* 13. § 7. If any person shall commence or defend any action, or sue out any writ, process, or summons, or carry on any proceedings in the county court, who shall not be admitted attorney or solicitor according to the act of 2 *G.* 2. *c.* 23., he shall forfeit 20*l*. with costs, to him who shall sue in any court of record.

12 G. 2. c. 13. Who shall act as attorney in this court.

The plaintiff in this court first takes out a summons, returnable at the next county court; and if the defendant do not appear, an attachment or *distringas* is to be made out: but if the defendant appear, the plaintiff is to file his declaration, showing his cause of action, or matter of complaint, in what manner the action accrued, at what time and place the wrong was done, and the damage he had sustained. *Greenw.* 11. *Read.* County Court.

Summons.

If the defendant doth appear, and the next court after gives a rule to declare, and the plaintiff doth not file his declaration within the time, he may be nonsuited. *Id.*

Declaration.

When the plaintiff hath declared, he must continue his suit from court day to court day, otherwise the defendant may take advantage of it; and this is called a continuance, being an adjourning of the suit from time to time, to keep it on foot. *Id.*

Continuance

The rule, or *dies datus*, is when farther day is given to the plaintiff to declare, or to the defendant to plead; and the time given is usually to the next court day, but upon occasion it may be enlarged. *Id.*

Dies datus.

The next court after filing the declaration, and imparlance given, the defendant is to put in his answer or plea, and if the plaintiff join issue, they may proceed to trial the next court day, if they proceed not farther by replication, rejoinder, surrejoinder, and the like. *Id.*

Answer.

Plea of freehold.

But if freehold be pleaded by the defendant, this court can proceed no farther, for freehold shall never be tried without writ; therefore the cause must be removed: as when a defendant avoweth for damage feasant, and the plaintiff justifieth by reason of common of pasture. *Wood's Inst. b.* 4. *c.* 1.

Judgment and distress.

Where a verdict is given for the plaintiff, and judgment entered thereupon, a *fieri facias* may be awarded against the defendant's goods, which may be taken by virtue thereof and appraised and sold, to satisfy the plaintiff: but if the defendant hath no goods whereupon to levy, the plaintiff remains without remedy in this court, for it being no court of record, no *capias* lies there; but an action may be brought at common law upon the judgment entered. *Greenw.* 22. *Read.* County C.

Removal by recordari.

Causes are removed out of this court by a writ of *recordari*, which issues out of the chancery, directed to the sheriff, commanding him to send the plaint that is before him in his county court, (without writ of *justices*,) into the court of K. B., or C. P., to the end the cause may be there determined. And the sheriff is hereupon to summon the other party to be in that court (into which the plaint is to be sent) at a day certain. And of all this he is to make certificate under his own seal, and the seals of four suitors of the same court. *Id.*

Removal by pone.

Causes are also removed by *pone*, which differs in nothing from a *recordari*, but that it removes such suits as are before the sheriff by writ of *justices*, and a *recordari* is to remove the suit that is by plaint only, without writ. *Id.*

Removal after discontinuance.

And although the plea be discontinued in the county, yet the plaintiff or defendant may remove the plaint into the C. P. or K. B., and it shall be good, and he shall declare upon the same. *Id.*

Outlawry pronounced.

In this court, after the *quinto exactus*, the coroner gives judgment of outlawry. 4 *Inst.* 266.

Hundred court.

Out of the county court is derived the hundred court, for the ease of the subject; and it hath like jurisdiction as the county court, and may be held every three weeks. 2 *Inst.* 71.

County Hall. See Shire Hall, Vol. V.

County Rate.

[12 G. 2. c. 29. — 13 G. 2. c. 18. — 55 G. 3. c. 51. — 56 G. 3. c. 49. — 57 G. 3. c. 94. — 1 & 2 G. 4. c. 85.]

THE purposes to which the county rates are now (principally) applicable by different acts of parliament are as follows: —

Apprentices.

(1) The paying one moiety of the charges of prosecuting masters for ill treating their parish apprentices, under stat. 32 G. 3. *c.* 57. § 11.

Apprentices to sea service.

(2) The charges of carrying parish apprentices, bound to the sea service, to the port to which the master belongeth; by stat. 2 & 3 *Ann. c.* 6.

(3) The repairing county bridges, and highways, thereto adjoining, and salaries for the surveyors of bridges; as directed by stats. 22 *H.* 8. *c.* 5. 1 *Ann. st.* 1. *c.* 18. and 52 *G.* 3. *c.* 110. **Bridges.**

(4) The money for purchase of lands at the ends of county bridges; by stat. 14 *G.* 2. *c.* 33.

(5) Charges attending the removal of any of the said general county rates by *certiorari*; by stat. 12 *G.* 2. *c.* 29. **Certiorari.**

(6) The coroner's fee of 9*d.* a mile for travelling to take an inquisition, and 20*s.* for taking it; by stat. 25 *G.* 2. *c.* 29. **Coroner's fees.**

(7) For relief of prisoners in the county gaol; by stat. 14 *Eliz.* *c.* 5. **Gaols.**

(8) For the salary of the chaplain of county gaol, and house of correction; by stat. 4 *G.* 4. *c.* 64.

(9) For setting prisoners to work; by stat. 4 *G.* 4. *c.* 64.

(10) For the preservation of the health of the prisoners; by stat. 14 *G.* 3. *c.* 59.

(11) Charges of carrying persons to the gaol or house of correction; by stat. 27 *G.* 2. *c.* 3.

(12) Allowance to discharged prisoners to enable them to return to their place of settlement; by stat. 5 G. 4. *c.* 85. § 22—25.

(13) The gaoler's fees for persons acquitted of felony or discharged by proclamation; by stats. 14 *G.* 3. *c.* 20. 55 G. 3. *c.* 50. 56 *G.* 3. *c.* 116.

(14) Fees to clerks of assize, clerks of the peace, clerks of courts, or their deputies, upon the acquittal or discharge of prisoners; by stats. 55 *G.* 3. *c.* 50. § 6. 56 *G.* 3. *c.* 116.

(15) For building, enlarging, and repairing county gaols; by stats. 11 & 12 *W.* 3. *c.* 19. and 24 *G.* 3. *Sess.* 2. *c.* 54. 4 *G.* 4. *c.* 64.

(16) For building, repairing, and fitting up houses of correction, and employing the persons sent thither; by stat. 4 *G.* 4. *c.* 64. **Houses of correction.**

(17) For the salary of the master of the house of correction, and for relieving the weak and sick in his custody; by stat. 7 *J.* 1. *c.* 4.

(18) Charges of bringing insolvent debtors before the travelling commissioner, in order to their discharge, if the prisoners are not able to pay; by stat. 5 *G.* 4. *c.* 61. § 2. **Insolvent.**

(19) For the relief of the prisoners in the K. B., and Marshalsea prisons, and of poor hospitals, in the county, and of those that shall sustain losses by fire, water, the sea, or other casualties, and other charitable purposes for relief of the poor, as the justices in sessions shall think fit; by stats. 42 *Eliz.* *c.* 2. § 15. 53 *G.* 3. *c.* 113. **K. B. and Marshalsea prisons.**

(20) Expences of providing, &c. county lunatic asylums reported necessary by visiting justices; by stat. 48 *G.* 3. *c.* 96. § 67. **Lunatics.**

(21) Charges of prosecuting and convicting felons; by stats. 25 *G.* 2. *c.* 36. 27 *G.* 2. *c.* 3. 14 *G.* 3. *c.* 20. 18 *G.* 3. *c.* 19. 58 *G.* 3. *c.* 70. § 4. **Prosecutions.**

(22) For repairing shire halls; by stat. 9 *G.* 3. *c.* 20. **Shire halls.**

(23) Charges of the soldiers' carriages, over and above the officers' pay for the same, by the several yearly acts against mutiny and desertion, and by the militia act 42 *G.* 3. *c.* 90. § 95. **Soldiers. (Militia.)**

(24) The charges of transporting felons, or conveying them to the places of labour and confinement; by stat. 6 *G.* 1. *c.* 23. § 3. **Transportation of felons.**

(25) The treasurer's salary; by stats. 12 *G.* 2. *c.* 29. and 55 *G.* 3. *c.* 51. § 17. **Treasurer's salary.**

Vagrants.

(26) Charges of prosecuting vagrants or incorrigible rogues at the sessions, or on appeals against their convictions, and of prosecuting constables, &c., for neglect of duty; by stat. 5 *G.* 4. *c.* 83. § 9. 12.

Weights and measures.

(27) Expences of procuring and transmitting models and copies of the standard weights and measures established; by stat. 5 *G.* 4. *c.* 74. § 13.

(28) Allowances to persons appointed to examine measures; by stat. 55 *G.* 3. *c.* 43. § 5.

Wreck.

(29) Charges of prosecuting and convicting persons plundering shipwrecked goods; by stat. 26 *G.* 2. *c.* 19.

(30) Charges of burying dead bodies cast on shore in *England*; by stat. 48 *G.* 3. *c.* 75. § 6.

12 G. 2. c. 29. Sessions may lay a general rate instead of the several rates formerly imposed for distinct purposes.

That the same may be collected with as much ease, and as little expence as possible, by stat. 12 *G.* 2. *c.* 29. § 1. the justices at their general or quarter sessions, or the greater part of them, shall have power to make one general rate to answer all the purposes of the acts recited therein in lieu of the several separate and distinct rates directed thereby to be made, levied, and collected.

Which rate shall be assessed in such proportions in every parish or place, *as any of the rates by the said several former acts have been usually assessed.*

Under this act, notwithstanding changes of circumstances and inequalities the sessions had no power to vary the proportions in which the county rate had *usually* been *assessed* on the several parishes. *R.* v. *St. Paul's, Covent-garden, Cald.* 158.

55 G. 3. c. 51.

But now by stat. 55 *G.* 3. *c.* 51. intituled "*An act to amend an act of his late majesty king* George *the second for the more easy assessing, collecting, and levying of county rates,*" after reciting that "whereas the laws now in force are found ineffectual for the correction of the disproportions which now exist, or which may from time to time take place, in the assessments of county rates," it is enacted, that from and after the passing of this act, it shall be lawful for the justices of the peace of the several counties in that part of *G.B.* called *England*, assembled at their general or quarter sessions, or at any adjournment or adjournments thereof, and they are hereby authorised and empowered, whenever circumstances shall appear to require it, to order and direct a fair and equal county rate to be made, for all the purposes to which the county stock or rate is now or shall hereafter be made liable by law, according to the directions hereinafter mentioned; and for that purpose, to assess and tax every parish, township, and other place, whether parochial or extra-parochial, within the respective limits of their commissions, rateably and equally, according to a certain pound rate (to be from time to time fixed and publicly declared by such justices) of the full and fair annual value of the messuages, lands, tenements, and hereditaments, rateable to the relief of the poor therein, any law or statute to the contrary thereof notwithstanding: provided also, that nothing in this act contained shall extend or be construed to extend to give any jurisdiction to the justices of the peace of the said several counties, over any places situate within the limits of any liberties or franchises having a separate jurisdiction, which before the passing of this act were subject to rates in the nature of county rates imposed and assessed by the justices of the peace for such liberties or franchises, or which were exempt from the rates of the county in which they lie, either in

Justices in general or quarter sessions, to make a fair and equal county rate, whenever circumstances appear to require it.

the whole or in part; nor to alter any proportion of county rate payable by any liberty or franchise having a separate jurisdiction, as established between the county and the said liberty or franchise, provided such exemption or proportion shall have been created by or derived from grant, charter, or any special local act of parliament: nor to compel any such liberty or franchise, paying to some one or more of the rates specified in the preamble of an act passed in the twelfth year of the reign of his late majesty king *George* the second, intituled "*An act for the more easy assessing, collecting, and levying county rates,*" to pay to any other rate therein mentioned, to which such liberty or franchise was not liable to contribute before the passing of this said act; nor to repeal or alter the provisions of any acts now in force which shall have fixed the times and places of holding any general or annual general sessions or adjournment thereof, for the assessing the rates of any county, or for the raising, levying, or collecting the same, but that such provisions so fixing the time or place of holding such general or annual general sessions or adjournment thereof, and of then and there exclusively transacting the matters therein mentioned respecting the county rates, shall be and remain in full force; and that all the matters and things which in and by this act are authorised to be done by the justices of the peace at their general or quarter sessions, or at any adjournment or adjournments thereof, shall be done and performed exclusively at such general or annual general sessions or at some adjournment thereof, and at no other time or place than such as shall have been fixed by any such act.

55 G.3. c.51. Not to alter proportion of any franchise having a separate jurisdiction;

12 G.2. c.29.

Nor to alter the times of holding any general quarter sessions for assessing the rates of any county.

§ 2. "And for the better enabling the said justices to make such fair and equal county rates, it shall be lawful for them, at any general or general quarter sessions of the peace, or at any adjournment or adjournments thereof (to be holden after the passing of this act) and as often as they shall deem it expedient, and they are hereby authorised and empowered to issue precepts, signed by their chairman, or by the clerk of the peace under the authority of the said court, to the high constables, petty constables, churchwardens, overseers of the poor, assessors and collectors of public rates and taxes of or for the several and respective parishes, townships, and places, whether parochial or otherwise, within their jurisdiction, or to such and so many of them as to the said justices shall seem expedient, requiring the said constables, churchwardens, and overseers of the poor, assessors and collectors respectively, to make returns in writing to the justices of their respective divisions in petty sessions assembled, (which returns shall be verified on oath, at the time of delivery, before any two or more such justices,) of the total amount of the full and fair annual value of the several estates and rateable property within the parish, township, or place, whether parochial or otherwise, to which they respectively belong, charged or assessed to the poor's rate at the time of making such return, or liable so to be, or charged or assessed on any other rate or assessment, whether parochial or public, without regard nevertheless to the actual amounts or sums assessed on the property therein, save and except in such parishes, townships, or places only, where such property is assessed to the full and fair estimated annual productive value."

Justices to require churchwardens and overseers to make returns annual value rateable property.

55 G. 3. c. 51.
Justices acting for divisions empowered to receive returns.

§ 3. "It shall be lawful for the said justices so assembled at their general or quarter sessions as aforesaid, and they are hereby anthorised and empowered from time to time, whenever they shall deem it expedient for the purposes of this act, also to make an order or orders for the justices of the peace, within the limits of their commissions, to meet from time to time within the several divisions in and for which they respectively act, and to fix therein the time of such first meeting; and the said justices in their respective divisions shall have power to adjourn from time to time, until the purposes of this act shall be completed; and any two or more such justices, assembled at any such meeting, shall receive the returns of the said constables, churchwardens, overseers, assessors, and collectors, causing the same to be verified as before directed, and them and every or any of them to examine on oath touching any matters and things contained in such returns, as in the judgment of the said justices may appear necessary for the purposes of this act, and to report their proceedings to the said justices assembled at the next or any subsequent general or quarter sessions, as they shall have ordered and directed."

To examine overseers, &c. on oath.

To report proceedings to the next or subsequent quarter sessions.

§ 4. "In case any constable, churchwarden, overseer, assessor, or collector aforesaid, shall neglect or make default in making any such return in manner aforesaid, to the precepts which shall be issued by or under the authority of the said justices; then and in every such case each and every such constable, churchwarden, overseer, assessor, or collector so neglecting and making default, (without sufficient excuse to be allowed by the said justices in their said general or quarter sessions) shall forfeit and pay such sum and sums of money, not exceeding 20*l.* as shall or may be ordered or adjudged by such justices so assembled as aforesaid, to be levied on the goods and chattels of each and every churchwarden and overseer of the poor so neglecting or making default."

Penalty on churchwardens and overseers not making returns.

Not exceeding 20*l.*

§ 5. "In case of default by not making due return of any matter or thing required by the precept of the justices in general or general quarter session assembled, as before directed, it shall be lawful for the justices in their respective divisions in petty sessions assembled, or any two or more of them, to issue their precepts to any officer or officers before described, who shall have made such default, to make their returns in writing, as before required, to them, on a day and at a place therein to be named, and so from time to time as often as shall be necessary; and in case any officer before described shall neglect or make default in making any such return to the precepts which shall be issued by any two or more justices acting for the division wherein such default shall be made, then and in every such case each and every such officer before described, so neglecting and making default as aforesaid without sufficient excuse to be allowed by the said justices acting for such division, shall forfeit and pay any sum not exceeding 20*l.*, as shall or may be ordered and adjudged by such last-mentioned justices, to be levied on the goods and chattels of the officers so neglecting or making default.

Justices in petty sessions assembled, empowered to issue their precepts to officers, requiring them to make returns in writing.

§ 6. "If any churchwarden or churchwardens, overseer or overseers, assessor or assessors, or collector or collectors, shall neglect or make default in making such return or returns as afore-

[Pa]rishes may be assessed although no return made.

paid, or if it shall happen that, notwithstanding the incurring of any such penalty or penalties as aforesaid for or on account of such neglect or default, a return for any parish, township, or place, whether parochial or otherwise, shall not be made within the time limited for the making thereof, then and in every such case it shall be lawful for the said justices, and they are hereby required, either at the said general or quarter sessions, or at any adjournment or adjournments thereof, or at some subsequent general or quarter sessions to be held for the same county, or at some adjournment or adjournments thereof, or at some petty sessions, or adjournment or adjournments thereof respectively, as the case may be, to ascertain the annual value of the property chargeable to the county rate, within or for each and every the parish, township, and place, whether parochial or otherwise, of which the constable or constables, churchwarden or churchwardens, overseer or overseers, assessor or assessors, collector or collectors, shall have so neglected or made default in making such return as aforesaid, by issuing fresh precepts, or by such other means as may appear to the said justices the most convenient and proper towards the obtaining a just and fair estimate of such annual value; and the said justices of the peace of the county in general or quarter sessions, or any adjournment or adjournments thereof, assembled, acting on their own discretion, or on the report of any two or more justices acting in and for any division of such county, as the case may be, shall order such allowance or compensation to be made to the persons employed in ascertaining the said annual value and in making such returns as aforesaid, as to the said justices so assembled shall appear reasonable; and all such allowances and compensations, and other expences as shall be thereby incurred, shall be by the said justices so assembled charged upon the parish, township, or place, whether parochial or otherwise, of which the churchwarden or churchwardens, overseer or overseers of the poor, shall have so neglected or made default as aforesaid, in addition to the proportion of the said county rate to be paid by such parish, township, or place, whether parochial or otherwise; and such allowances, compensations, and expences, shall and may be raised, levied, and collected by such and the like ways and means as the said county rate can or may be raised, levied and collected, and shall be paid therewith, due distinction being made in the case of every such additional assessment between the sum or sums charged for and on account of any such expences and the sum or sums assessed as and for the county rate."

55 G.3. c.51. See stat. 1 & 2 G.4. c.85. post.

Or at some petty sessions or adjournment

Justices empowered to order compensation to be charged upon parish or place, the officer of which shall hav made default.

§ 7. Provided always, "that in all cases and places as aforesaid, where there are no churchwardens or overseers of the poor, or where no rate is made and collected for the relief of the poor, or where the justices of the peace of any county or of any division thereof, assembled as aforesaid, for the purpose of receiving such returns as aforesaid of the annual value of the property chargeable to the county rate, shall be of opinion that the returns made to them do not afford a full, fair, and just account of the annual value of the property rateable, it shall and may be lawful to and for the said justices of the peace so assembled to summon before them any one or more substantial inhabitant of such places respectively, or any other person or persons whom

Parishes may b assessed where no overseers or churchwardens or where no poor's rate, or where returns insufficient.

56 G. 3. c. 51.

they the said justices may think proper, to give evidence as to the fair annual value of such rateable property; and then and there to examine such inhabitant or inhabitants and other person or persons respectively on oath (which oath any one or more of the said justices is and are hereby authorised to administer) as to the annual value of such property."

Where no poor's rate or overseer, justices to appoint. Vide 56 G. 3. c. [illegible]. post.

§ 8. "In such place or places where there is no poor's rate, or overseer of the poor or churchwarden, or other officer, necessary for the execution of the provisions of this act, residing within the limits of the jurisdiction of the justices of the peace of the county requiring such returns, and in which there is any property liable to the poor's rate, but not rated or assessed thereto, it shall and may be lawful for the said justices of the peace of the county, assembled as aforesaid, or for the justices of the peace resident in and acting for any division of the county in which such place or places are situate, at any petty sessions or adjournment thereof, to be holden by them within such division as aforesaid, and they are hereby authorised and required to appoint one or more proper person or persons to act as overseer or overseers, or other such officer as aforesaid, who is and are hereby authorised, empowered, and required to act within such place or places respectively, for effecting the purposes of this act; and such person or persons respectively shall have the like powers vested in him or them, and shall be subject to the same regulations and penalties for effecting all such purposes, as fully and effectually, to all intents and purposes, as if he or they had been appointed overseer or overseers of the poor, or churchwarden or churchwardens, or other officer or officers, under any law or laws now in force."

Which person, so appointed, shall be vested with full powers as if he had been appointed overseer.

Justices empowered to call for all parliamentary and parochial assessments, &c.

§ 9. "And for the better enabling as well the said justices in general or quarter sessions assembled, as the justices of the several divisions acting under the order or orders of the justices assembled as aforesaid, respectively, to ascertain the fair annual value of all property liable to be so rated; it is hereby further enacted, that it shall and may be lawful to and for such justices, or any two or more of them, from time to time, whenever the same may be, in the judgment of such justices, necessary for the more correct execution of this act, to cause any of the books of assessment of any rates or taxes, parliamentary or parochial, which have lately been, are now, or shall hereafter be laid on any part of the property, liable to be assessed towards the purposes for which a county rate is applicable, and the valuation by which such assessments are or were made, mentioned, and described, within any parish or place within the limits of the jurisdiction of the said justices, in the hands of any constable, churchwarden, overseer, assessor, or collector, to be brought before them or him, and to take copies or extracts of and from such books, or any parts thereof, or to order and direct any person to take such copies or extracts from such books, in the hands of them or any of them, without having the same brought before the said justices, or to call before them any such constable, churchwarden, overseer, assessor, or collector, to give evidence respecting the same, as they, or he, or any of them shall think fit, such compensation being made to the person or persons employed for any of the purposes aforesaid, as the said justices, or any two or more of them, shall think reasonable; and if any person or persons, in whose custody or power any of the said books may be, shall

To take copies or extracts from books of assessment, &c.

Penalty of 10*l*. on persons in

neglect or refuse to attend the said justices with such book or books; or to permit any such copies or extracts to be taken as aforesaid, or to give such information or evidence on oath as may be required by such justices, (which oath such justices, or any one or more of them, are and is hereby authorised to administer) then and in every such case, every person who shall so refuse or neglect, shall for every such offence forfeit and pay any sum not exceeding 10*l.*; and moreover it shall be lawful for such justices in the like cases, from time to time to cause copies of the total amount assessed in each parish, township, or place, in respect of any aids or taxes payable to H. M., his heirs or successors, and the total amount of the valuation of the property on which such assessments were made in any year then elapsed, to be made out by the clerk to the commissioners of each district within the limits of the jurisdiction of such justices, such compensation being made to the respective clerks as the said justices, or any two of them, shall think reasonable; and if any such clerk shall neglect or refuse to make out such copies within a reasonable time after his receipt of the order of such justices, every such clerk shall forfeit and pay the sum of 20*l.*

55 G. 3. c. 51. — whose custody said books are, neglecting to attend or to permit extracts.

Clerks to commissioners to make out assessments.

Penalty for neglect.

§ 10. "And for the better enabling the churchwardens and overseers of the poor, chief constables, and other persons, to make accurate returns as herein-before required, in cases where doubts are entertained;" it is enacted, "that it shall be lawful for them, or any of them, or for such other person or persons as they may select for that purpose, by warrant under the hands and seals of any two or more justices of the peace of the county in general or quarter sessions assembled, to enter upon, view, and examine all and any lands or other property chargeable to the county rate, in order to ascertain the annual value at which the same ought to be charged: provided always, that no such entry shall in any case be made, unless fourteen days' previous notice of the intention of making such entry shall have been given under the hands and seals of the justices authorising the same, to the churchwardens or overseers, or to the person or persons appointed to act, in default of such churchwardens or overseers of the parish, township, or place, whether parochial or otherwise, and to the person or persons whose lands are to be entered upon for the purpose of making such valuation."

Persons authorised to enter upon lands to ascertain value.

Fourteen days' notice of intention of entry to be given.

§ 11. And, "whenever the justices in general or quarter sessions assembled shall have ordered any county rate to be made, which they are hereby authorised to order from time to time, whenever the same shall be necessary, and the justices in petty sessions shall by any of the aforesaid ways and means have ascertained to their own satisfaction the fair and just annual value of any or of all the rateable property within their respective divisions, and they are hereby required from time to time to certify under their hands the true amount thereof, to the then next general or quarter sessions of the peace for the same county, to the intent that at such general or quarter sessions, or at some adjournment or adjournments thereof, or at some subsequent general or quarter sessions, or adjournment or adjournments thereof, the justices there assembled may from time to time, and as often as they shall deem it necessary, make a fair and equal rate on all such rateable property, or correct any inequalities which upon appeal shall be

Justices of division to certify value ascertained to justices in quarter sessions.

55 G.3. c.51.

shewn to their satisfaction to exist in any rate now existing or hereafter to be made."

Justices authorised to issue warrants for levying new rates, according to usual practice.

§ 12. "And it shall be lawful to and for the justices of the peace of any county, or the major part of them, in general or quarter sessions, or at any adjournment or adjournments thereof, assembled, as often as they shall have deemed it necessary to make a rate or rates, assessment or assessments on all the rateable property within the limits of their jurisdiction, according to the fair annual value of the same, as derived from any or all of the several sources of information which are hereinbefore mentioned, and they are hereby authorised and empowered to order warrants to be from time to time issued, in the same manner as now authorised and practised by law for collecting the county rates, to the several high constables within their respective counties, ordering and requiring them to issue their warrants to the respective overseers of the poor within their respective divisions, to levy, collect, and pay to the said high constables within a time to be named and limited in the warrant to be issued from the sessions as aforesaid, all such rate or rates, assessment or assessments, which each high constable shall and he is hereby directed and required to pay, at such time as shall be specified in such warrant, to the treasurer of the county for the time being, to be applied and disposed of in such manner and for such purposes as the county stock or rate is now applicable or may hereafter be made applicable by law: and in case any overseer or overseers of the poor, or other person appointed to act as such under the provisions of this act, in any of the several parishes, townships, or places, whether parochial or otherwise, within any county liable to pay the same, shall neglect, make default, or refuse to pay the same within the time to be specified and limited for that purpose as aforesaid, to the high constable of the division within which such overseer or overseers, or other person or persons so liable and neglecting to pay, shall reside or be appointed to act, it shall and may be lawful for any justice of the peace of the said county, upon complaint thereof made by any such high constable, by warrant under the hand and seal of any such justice, to levy the same by distress and sale of the offender's goods; and the overseer or overseers of the poor of any parish, township, or place, whether parochial or otherwise, or other person or persons appointed to act as such overseer or overseers, shall and may and is and are hereby empowered to levy and raise by an equal rate or assessment upon all and every the several estates and property rateable to the relief of the poor, within their respective parishes, townships, or places, whether parochial or otherwise, such sum and sums of money as shall be required and necessary, in order to raise the several sums assessed upon such parishes, townships, or places respectively; or to reimburse such overseer or overseers, or other person or persons as aforesaid, such sum or sums of money as they shall respectively have paid on account of the same; such rate or assessment to be paid by the occupier or occupiers for the time being of such estates and rateable property as aforesaid."

Overseer not paying county [illegible]

To reimburse overseers.

Rate to be paid by the occupier.

In places where poor rate does not separately apply, justices

§ 13. "And whereas it would be inconvenient and oppressive to many townships or places, that the sum of money which may be assessed on them as or for a county rate under this act, should be paid out of any rate made for the relief of the poor, where such

poor rate doth not apply separately and distinctly to the parish, township, or place; it is enacted, that it shall be lawful for the justices of the peace, at their general or quarter sessions, or at any adjournment thereof, if they shall think convenient, to order the sum of money directed to be assessed as or for the county rate on any such parish, township, or place, whether parochial or otherwise, to be paid and levied on the churchwardens, overseers, or petty constables, of or for any such parish, township, or place, in such manner as the same is herein directed to be paid and levied in cases where no rate is made for the relief of the poor."

55 G. 3. c. 51. may order county rate to be levied as where no poor rate.

§ 14. Provided always, "that if the churchwarden or churchwardens, overseer or overseers of the poor, or other inhabitant or inhabitants of any parish, township, or place, whether parochial or otherwise, where there is no churchwarden or overseer, or person appointed to act as such, shall at any time have reason to think that such parish, township, or place is aggrieved by any rate now existing or hereafter to be made, either in pursuance of this act or of any act or acts now in force, whether it be on account of the proportions assessed upon the respective parishes, townships, or places being unequal, or on account of some one or more of them being without sufficient cause omitted altogether from the rate, or on account of such parish, township, or place being rated at a higher proportion of the pound sterling according to the fair annual value of the rateable property therein, or on account of some other parish or parishes, township or townships, place or places being rated at a lower proportion of the pound sterling according to the fair annual value of the rateable property therein, than has been fixed and declared by the justices of the peace of the said county, in sessions assembled, as the basis of the rate of the said county, or on account of any other just cause of complaint whatsoever; it shall be lawful for such churchwarden or churchwardens, overseer or overseers of the poor, or other inhabitant or inhabitants where there is no churchwarden or overseer, or person appointed to act as such, to appeal to the justices of the peace for the county at any general or quarter sessions, against such part of the rate only as may affect the parish or parishes, township or townships, place or places, which are unequally rated, or which shall appear to be over-rated or under-rated, or omitted altogether from the rate; and the said justices are hereby empowered to hear and finally determine the same, and either to confirm such parts of the rate as have been appealed against, or to correct such inequalities, disproportions, or omissions, as shall be proved to exist therein, in such manner as to them the said justices shall appear fair, just, and equitable; any thing in this act, or any former act or acts, or any law, usage, or custom to the contrary thereof notwithstanding: provided nevertheless, that upon such appeal, no such rate shall be quashed or destroyed in regard to any other parish, township, or place, unless in cases where the justices of the peace of any county, in general or quarter sessions assembled, or the major part of them, shall deem it necessary to proceed to the making of an entire new rate, and shall proceed therein according to the provisions of this act." Vid. *post.* stat. 56 *G.* 3. *c.* 49. § 5. and 57 *G.* 3. *c.* 94. § 1, 2. p. 825, 826.

Parishes aggrieved may appeal.

R. v. *the Justices of the Peace for the city and county of the city of York. E.* 5 *G.* 4. 2 *B.* & *C.* 771. A rule had been obtained

By 55 G. 3. c. 51. § 14. an appeal is give

55 G. 3. c. 51.

against a county rate made in fixed proportions invariably adopted for a series of years.

calling upon the defendants to shew cause why a writ of mandamus should not issue, commanding them to cause continuances to their next general quarter sessions of the peace, to be holden in and for the said city and county, to be entered, upon the appeal of the overseers of the poor of the parish of *St. Crux* in the said city, against a rate or assessment made by virtue of an order of the court of general quarter sessions of the peace, held for the said city and county, on *Friday*, the 17th day of *October* last, whereby the inhabitants of the parish of *St. Crux* were assessed in the sum of *32l.* 14*s.* 9*d.*, as their proportion of the sum by the court directed to be estreated on the inhabitants of the said city and county, and at such next general quarter sessions of the peace to hear and determine the merits of the said appeal. It appeared that a rate had been made, and imposed upon the respective parties within the city and county in such fixed proportions as had been for a long series of years invariably adopted. Against this rate the parish of *St. Crux* had appealed, on the ground of being over-rated, but the sessions refused to entertain the appeal, conceiving that they were not authorised by any existing law to vary the fixed proportions of the county rates from the form in which they had for many years existed.—After argument, *Per Abbott* C. J. We are of opinion, that a power of appealing is given by the fourteenth section of stat. *55 G. 3. c. 51.* in a case like the present; and instead of thinking such a power at variance with the object of that act, we consider it the most convenient construction that the statute can receive. The rule must therefore be made absolute. R. A.

§ 15. Enacting, that expence of appeals to be paid by parishes, or persons appealing, is repealed by stat. 57 *G. 3. c.* 94. § 3.

Power to justices to compensate persons employed, out of county rates.

§ 16. And "it shall and may be lawful for the justices of the peace of any county, in general or quarter sessions, or any adjournment thereof, from time to time assembled, to order such allowances and compensations to be made to the overseers, churchwardens, constables, assessors, collectors, clerks, or other persons employed in the execution of this act (*a*), which have not herein-before been provided for, from, by, and out of the monies assessed, levied, and collected by any county rate made under this or any former act or acts, as to the said justices shall appear reasonable and proper."

High constables to give security.

§ 19. "And the justices of the peace of the said several counties are hereby authorised and empowered to demand and take, whenever they shall think fit, good and sufficient security to be approved of by the said justices in general or quarter sessions assembled, from the high constables employed in the collecting and levying the rates; and if any such high constable, upon being so called upon by the said justices, shall neglect or refuse to give such security as shall be approved by them, it shall then be lawful for the said justices of the peace in quarter sessions assembled, to order and direct the churchwardens and overseers of the poor, or other persons appointed to assess, collect, and levy the rates of any parish, township, or place, to pay the quota which shall be assessed thereupon towards the county rate, to the treasurer

(*a*) *Quære*, Whether the sessions have a power under this act to make any compensation to the Clerk of the Peace. See *Rex* v. *Williams*, Vol. V. tit. Sessions, (*Jurisdiction*), p. 215.

of the county, division, or place, in which such parish, township, or place shall be situate; and the receipt of such treasurer shall be a sufficient discharge for the same."

55 G.3. c.51.

§ 20. And "all and every the clauses, powers, directions, provisions, and authorities contained in the said act, made in the twelfth year of his late majesty king *George* the second, intituled *An act for the more easy assessing, collecting, and levying county rates;* and also so much of another act made in the thirteenth year of the reign of his said late majesty king *George* the second, intituled) *An act to continue several acts therein mentioned,* &c. *And for extending the powers and authorities of justices of the peace of counties, touching county rates, to the justices of the peace of such liberties and franchises as have commissions of the peace within themselves,* as relates to county rates, (save and except such parts thereof respectively as are hereby varied, altered, or repealed,) shall be good, valid, and effectual, for the purposes of assessing, levying, collecting, and enforcing the payment of the rate or rates hereafter to be made in pursuance of this act, and for carrying this act into execution."

Extending former acts to this act. 12 G.2. c.29. 13 G.2. c.18.

§ 21. "And whereas several acts have passed in the reign of his present majesty, and are now in force, empowering the justices of the peace of certain counties to make fair and equal county rates within their respective counties;" it is enacted, "that it shall and may be lawful to and for the said justices respectively, and they are hereby empowered, at any time and at all times after the passing of this act, to proceed in the assessing, levying, and collecting and enforcing the payment of the county rate, and in all matters relating to the equalizing the same, either under the authority and according to the provisions and enactments of this act, or under the authority and according to the provisions and enactments of the particular acts affecting their respective counties, as to them shall seem fit and proper, in all cases in which the provisions and enactments of this act are not inconsistent with the provisions and enactments of such particular acts."

Counties where rates have been regulated by particular acts, authorised to make use of the provisions of this act. Vide post, 56 G.3. c.49. § 2.

§ 22. "The several forfeitures and penalties inflicted by this act shall, if not immediately paid, be levied by distress and sale of the offender's goods and chattels, by virtue of any warrant under the hand and seal of any one justice of the peace for the county not only in the county in which the offence shall have been committed, but in any other county, city, town, borough, franchise, or place, (the warrant or warrants for levying the same being in such last-mentioned case first endorsed by some justice of the peace for the county, or mayor or other head officer of the city, town, borough, or franchise, where any goods of the respective defaulters shall be found) returning the overplus (if any) after the charges of such distress and sale shall be deducted; and in case sufficient distress shall not be found, then it shall be lawful for such justices to commit the offender to the common gaol of the said county, there to remain without bail or mainprize, for any time not exceeding three calendar months, unless the forfeitures and charges be sooner paid; and the said forfeitures, when recovered, shall be paid to the treasurer of the county, or of any division thereof, in which they shall have been incurred, to be applied in aid of the rates of the said county or division thereof: and no person shall be deemed incompetent to be a witness for the execution of the

Forfeitures, &c. how to be levied and applied.

Persons paying county rates

55 G.3. c.51.

deemed competent witnesses.

purposes of this act, or in any appeal or other proceedings instituted by virtue thereof, by reason of his paying or being liable to pay towards the poor rates or county rates within the said county."

Limitation of actions.

§ 23. "No action or suit shall be brought, commenced, or prosecuted against any person or persons, for any thing done or to be done by virtue of or in pursuance of this act, after three calendar months next after the fact committed; and every such action shall be brought and laid in the county where the cause of action shall have arisen, and not elsewhere; and the defendant or defendants in every such action or suit shall and may plead, at his, her, or their election, this act specially, or the general issue, and give this act and the special matter in evidence at any trial to be had thereupon, and that the same was done in pursuance or by the authority of this act; and if upon trial of such action or suit it shall appear to have been so done, or that such action or suit shall have been brought after the time limited for bringing the same as aforesaid, or be brought or laid in any other county than as aforesaid, then and in every the said cases the jury shall find a verdict for the defendant or defendants; and in all cases where a verdict shall be found for any defendant or defendants in such action or suit, or the plaintiff or plaintiffs therein shall discontinue the same, after the defendant or defendants shall have appeared thereto, or shall be nonsuited, or if upon demurrer judgment shall be given against such plaintiff or plaintiffs, then and in every such case the defendant or defendants shall recover treble costs, and have the like remedy for recovering the same as any defendant or defendants hath or have for recovering costs of suit in any other cases by law."

Extending the provisions of this act to places that have commissions of the peace within themselves.

§ 24. "And where any ridings or divisions have separate commissions of the peace, or where any cities, towns, or other places, within that part of *G. B.* called *England*, have commissions of the peace within themselves, and are not subject to the jurisdiction of the commissions of the peace for the counties at large in which such liberties or franchises lie, and do not, nor did before the passing of this act, contribute or pay to the several rates made for the said counties at large, it shall and may be lawful to and for the justices of the peace of such separate jurisdictions within the respective limits of their commissions, to have, use, and exercise all and singular the powers, authorities, and methods, given or prescribed by this act; and all such separate jurisdictions are hereby declared to be subject thereto, in the same manner to all intents and purposes as counties at large; any law, usage, or custom to the contrary notwithstanding."

56 G.3. c.49.

By stat. 56 *G.* 3. *c.* 49. After reciting stat. 55 *G.* 3. *c.* 51. And whereas, by the said recited act (*vide* § 8.) the justices of the peace of the several counties, ridings, or divisions of counties, cities, towns, or other places having commissions of the peace within themselves, in that part of *G. B.* called *England*, are authorised and empowered to assess and tax, for the purposes of the said act, every parish, township, and other place, whether parochial or extra-parochial, within the respective limits of their commissions, according to a certain pound rate of the full and fair annual value of the messuages, lands, tene-

ments, and hereditaments rateable to the relief of the poor therein; and doubts having arisen under the said act, whether any messuages, lands, tenements, or hereditaments, situate within any extra-parochial or other place where no rate for relief of the poor is made and collected, could be made subject to the county rate to be raised under the said act, and it is expedient that such doubts should be removed;" it is therefore enacted, "that all messuages, lands, tenements, and hereditaments, situate, lying, or being in any extra-parochial place, or other places, whether rated to the relief of the poor or not so rated, although the same may not be deemed rateable to the relief of the poor within such extra-parochial places, or other places where no rate is made for the relief of the poor, shall be, and the same are hereby declared to be subject to be assessed, taxed, and rated, by and under the order, direction, and authority of justices of the peace, in such and the same manner as the messuages, lands, tenements, and hereditaments, within any parishes or places where a rate is made for the relief of the poor; and the justices of the peace shall in all cases, where the same may be necessary, appoint proper persons within such extra-parochial or other places, as directed in and by the said recited act, for the assessing, taxing, and rating such extra-parochial messuages, lands, tenements, and hereditaments, and levying, collecting, and paying over such assessments, taxes, or rates, under the provisions of the said recited act."

56 G.3. c.49.

Extra-parochial and other places, though not deemed rateable to the relief of the poor, subject to be rated to the county rate.

§ 2. "And whereas doubts have arisen and may arise, touching the boundaries of counties, ridings, and divisions and parts of counties, and other places of distinct and separate jurisdiction, and touching the jurisdictions of justices of the peace in relation thereto, under the provisions of the said recited act; and it is expedient that such doubts should be removed, and that boundaries should be ascertained in all such cases, for the purposes of carrying the said recited act into execution; be it therefore enacted, that the justices of the peace of counties and ridings, and divisions and parts of counties, and other places of distinct and separate jurisdiction, in that part of *G.B.* called *England*, assembled at their several and respective general or quarter sessions of the peace, or at any adjournment thereof, shall be and they are hereby authorised and required, in any case in which any question or doubt does or shall exist, or shall have arisen, or may in the judgment of the said justices be likely to arise, as concerning any boundary between any counties, ridings, divisions, or parts of any county, or other places of distinct and separate jurisdiction, for which they respectively act as such justices, to nominate and appoint two justices of the peace of each such county, riding, division, or parts of any county, or other places of distinct and separate jurisdiction, between which the boundary is required to be ascertained, for the purpose of fixing and determining such boundary; and the clerks of the peace, town-clerks, and other proper officer (*a*) of the several and respective general or quarter sessions of the peace at which such justices shall be appointed, shall forthwith give notice to each other, and to such justices, of such appointment; and the justices so appointed shall in every such case, as soon as may be after their appointment, meet and proceed to ascertain the boundary, upon such evidence as can be

Justices in general or quarter sessions, to appoint justices to fix and determine boundaries, between counties, ridings, divisions, or parts of counties, and other places of distinct and separate jurisdiction.

(*a*) *Sic.*

6 G.3. c.49. obtained by them, or as they shall deem necessary for that purpose, either by examination of witnesses upon oath (which oath any one of the said justices is hereby empowered to administer), or of any maps, plans, surveys, or any other records or documents, or in such other manner as they the said justices so appointed shall think requisite; and it shall be lawful for such justices, or for any persons authorised under the hand of any three or more of such justices, to enter upon any lands, grounds, or premises, for the purpose of examining the same, or making any measurement, maps, or plans thereof, for the purposes aforesaid; and it shall be lawful for the said justices to summon any witnesses to be examined in that behalf, and to impose any penalty or forfeiture not exceeding 10*l.* upon any witness who shall, without reasonable excuse, refuse or neglect to attend to be examined upon any such summons, which penalty or forfeiture may be recovered as any penalty or forfeiture may be recovered under any of the provisions of the said recited act; and such justices shall thereupon fix, ascertain, and determine the boundary so referred to them to be ascertained, and shall cause the boundary so fixed and determined to be laid down on two maps or plans, to be signed by the said justices so appointed as aforesaid, which shall be deposited with the clerks of the peace, town clerks, or other proper officer, for the counties, ridings, divisions, or parts of counties, or other places of distinct and separate jurisdiction, between which such boundary shall be so fixed and determined, and which maps and plans shall be kept amongst the records of their respective sessions, and shall be received as evidence of such boundaries; and such boundaries, so fixed and determined, shall be and be deemed the boundaries between the respective counties, ridings, divisions, or parts of counties, or other places of distinct and separate jurisdiction, for which the same shall have been so ascertained, for all the purposes of this and of the said recited act, and the carrying the provisions thereof respectively into execution; any thing contained in any other act or acts of parliament, relating to such counties, ridings, divisions, or parts of such counties, or other places of distinct and separate jurisdiction, or any law, usage, or custom to the contrary notwithstanding."

Appointment of new justices. § 3. "And if any of the four justices so appointed as aforesaid, or who shall be appointed in manner hereinafter mentioned, shall, before the execution of all the powers and authorities hereby in them respectively vested, die, decline, or refuse to act, or become incapable of acting, the justices of the peace of counties, ridings, divisions, and parts of counties, and other places of distinct and separate jurisdiction, assembled at their several and respective general or quarter sessions of the peace, or at any adjournment thereof, from which such justice so appointed or to be appointed shall die, decline, refuse to act, or become incapable of acting, shall, and they are hereby authorised and required to appoint another justice in the room of him so dying, declining, refusing to act, or becoming incapable of acting as aforesaid, and so from time to time as often as any justice so to be appointed as last aforesaid shall die, decline, or refuse to act, or become incapable of acting; and every justice to be appointed as aforesaid shall have the like power and authority as the justice in whose place he shall

be appointed was invested with by virtue of this act; and notice shall be given by the clerks of the peace, town clerks, or other proper officers, to such justice, of his appointment, in manner hereinbefore directed."

56 G.3. c.49.

§ 4. "Provided, that if it shall happen that the justices so appointed to fix, ascertain, and determine the boundaries as aforesaid, shall disagree in opinion touching the boundary between any county, riding, division, or parts of any county, or other place of distinct and separate jurisdiction, so referred to them under and by virtue of this or the said recited act, and there shall be an equality of votes, so that the said justices cannot make any determination thereon, then and in such case the said justices, or the major part of them, shall forthwith appoint under their hands, such person as they may think proper to act as referee, which person so appointed as referee shall, within twenty-one days from the receipt of such appointment, fix a time and place to meet such justices; and at such meeting the said person so to be appointed as referee as aforesaid shall, together with the said justices to whom any boundary shall be referred to be ascertained as aforesaid, proceed to fix, ascertain, and determine the boundary about which such disagreement shall take place amongst them the said justices, in such and the same manner, and with such and the like powers in all respects as hereinbefore expressed, and the determination and decision of the said justices, and of the person whom they shall appoint as referee as aforesaid, or of the major part of them, shall be for ever binding and conclusive; and the said justices, and the person whom they shall appoint as referee as aforesaid, or the major part of them, shall cause the boundary so fixed and determined to be laid down on two maps or plans, to be signed by the said justices and the person so appointed as referee as aforesaid, or by the major part of them, which shall be deposited with the clerks of the peace, town clerks, or other proper officer, as hereinbefore directed, and kept amongst the records of their respective sessions, and shall be received as evidence of such boundaries; and such boundaries so fixed and determined shall be and be deemed the boundaries between the respective counties, ridings, divisions, or parts of counties, or other places of distinct and separate jurisdiction, for which the same shall have been so ascertained, for all the purposes of this and of the said recited act, and the carrying the provisions thereof respectively into execution, any thing contained in any other act or acts of parliament, relating to such counties, ridings, divisions, or parts of such counties, or other places of distinct and separate jurisdiction, or any law, usage, or custom to the contrary notwithstanding."

In case of difference between justices, a referee to be appointed to meet them, and determine boundary.

§ 5. Directing how appeals shall be proceeded in, is repealed by stat. 57 *G.* 3. *c.* 94. § 1.

§ 6. "Nothing in this act contained, nor any proceedings under the same, shall extend, or be construed to extend, to determine any question of boundary for any purpose, except for the purpose of assessing, collecting, and levying rates, according to the provisions of this act, and of the said recited act.

Act not to determine any question of boundary.

§ 7. "And all the powers, authorities, provisions, clauses, and regulations contained in the said recited act, shall be deemed and

Extending former act to this act.

57 G.3. c.94.

taken to apply to this act, as if the same were severally and respectively repeated and re-enacted in this act; and this act and the said recited act shall be construed as one act."

So much of the recited act as respects appeals, &c. repealed.

Stat. 57 G. 3. c. 94. after reciting stat. 56 G. 3. c. 49. and that whereas it is expedient to repeal so much of the said act as directs, that in all cases in which any appeal or appeals shall be made under the said recited act of 55 G. 3. c. 51. to any rate or assessment made in pursuance thereof, the same should be made to the next general or quarter sessions of the peace after the cause of appeal shall have arisen, and that fourteen clear days' notice in writing should be given of the intention to try such appeal, &c. it is enacted, that the same shall be and is thereby repealed.

Rate to be raised notwithstanding appeals, until determination of justices.

§ 2. "And from and after the passing of this act the rate or rates made upon any parish, township, or place, (whether extra-parochial or otherwise) under any act or acts passed for the assessing, collecting, and levying of county rates, shall be paid, and shall and may be levied, recovered, and received, notwithstanding any appeal or appeals may have been made to the general or quarter sessions of the peace against any such rate or rates; and such rate or rates shall continue to be raised, levied, and received, until the decision of the justices shall be made upon such appeal or appeals: Provided always, that if upon the hearing of any such appeal or appeals the court of general or quarter sessions of the peace shall order any rate or assessment to be set aside, decreased, or lowered, and it shall appear to the said court that any parish, township, or place have or hath, previously to the determination of such appeal or appeals, paid any sum or sums of money in consequence of such rates or assessments, which ought not to have been paid or charged therein, then and in every such case the said court shall order such proportion of such sum or sums of money as shall have been so paid by any person or persons, parish, township, or place, subsequently to the notice which shall have been given of such appeal or appeals, to be repaid and returned to the person or persons, parish, township, or place, which have or hath paid the same respectively, out of the general rate of the county in which the cause of appeal shall have arisen: Provided always, that fourteen clear days' notice in writing shall be given by the parties intending to appeal against any rate or assessment, to the parties against whose rate the appeal is to be made, the clerk of the peace of the county, and the hundred constable, of the intention to try such appeal at the next general quarter sessions of the peace; any thing in any act or acts to the contrary notwithstanding."

In case justices order rate to be set aside, decreased, or lowered;

Money paid subsequent to the time of appeal to be returned out of the general county rate.

Notice of appeal.

So much of recited act as directs that the expences of appeal shall be paid by such parishes as the justices shall appoint, repealed.

§ 3. "And further that so much of the said recited act as directs that the expences of all appeals, actions, suits, or proceedings at law, in respect of any thing done in pursuance of the said recited act, shall be paid by such respective parishes, townships, places, and persons as the said justices in general or quarter sessions shall direct, or such court wherein such proceeding shall be instituted shall order, and shall not be charged to or be paid out of the county rate, shall be and the same is hereby repealed."

Expences of appeals shall be

§ 4. "And in case of any appeals, actions, suits, or proceedings at law respecting any thing done in pursuance of this act, or

any other act or acts relating to the county rate, the expences of all such appeals, actions, suits, or proceedings at law shall be borne and paid by such respective parishes, townships, places, and persons, or such of them, and in such proportions as the said justices shall upon any appeal in their general or quarter sessions award and order, or as such courts wherein such actions, suits, or proceedings shall be instituted shall adjudge and order."

57 G.3. c.94.

paid in such proportions as the justices shall award.

§ 5. "And whereas there are several parishes, townships, and places in and over which the high constables have no jurisdiction; it is enacted, that in all such cases it shall be lawful for the justices of the peace of any county in which such parishes, townships, or places shall be situate, to issue their warrants for collecting the county rate to one or more of the constables of such parishes, townships, or places; and such constable or constables shall collect, levy, and pay such county rate in such and the like manner as the high constables are by the said act empowered and required to do, and shall be subject to the like penalties in case he or they shall neglect to demand, levy, or account for such county rates, as the said high constables are subject or liable to by any law or statute now in force."

Where there are no high constables, other constables may levy the rates.

By stat. 1 & 2 *G.* 4. *c.* 85. § 1. after reciting stats. 12 *G.* 2. *c.* 29. (*ante*, p. 812.) 13 *G.* 2. *c.* 18. (*post*, p. 830.) 55 *G.* 3. *c.* 51. (*ante*, p. 812.) 56 *G.* 3. *c.* 49. (*ante*, p. 822.) and 57 *G.* 3. *c.* 94. (*ante*, p. 826.) and that "whereas there are several parishes, townships, hamlets, and places, situated in and extending into two or more counties, ridings, or divisions, having separate and distinct commissions of the peace, part of such parishes, townships, hamlets, and other places being situated in one county, riding, or division, and other part or parts thereof in another county or other counties, riding or ridings, division or divisions, and the messuages, lands, tenements, and hereditaments situated in such parishes, townships, hamlets, or other places, are rateable to the relief of the poor therein, and to the county rates of the respective counties, ridings, or divisions, in which such messuages, lands, tenements, and hereditaments are respectively situated: but the constables, churchwardens, and overseers are appointed for the whole of such parishes, townships, hamlets, or places, and it frequently happens that such constables, churchwardens, and overseers are resident in one division of such parishes, townships, hamlets, or other places, and that there are no constables, churchwardens, or overseers residing in the other division thereof, or within the limits of the jurisdiction of the justices making such county rate or rates, whereby considerable difficulties have in such cases arisen in raising the county rates in such divisions;" it is enacted, "that from and after the passing of this act, all and every the powers and provisions, clauses, pains, penalties, and forfeitures, given, granted, provided, made, or imposed, by the said recited acts or any of them, shall extend, and be deemed, construed, and taken to extend, to all cases and places as aforesaid, where there are no separate churchwardens or overseers of the poor, or where no separate or distinct rate is made and collected for the relief of the poor of any such division, or part of any parish, township, or place, situated in and extending into two or more counties, ridings, or divisions as aforesaid, as fully

1 & 2 G.4. c.85. Preamble.

Powers of recited acts to extend to places where there are no separate churchwardens, &c. or where no separate or distinct poor rate is made for any place extending into two or more counties, &c.

1&2 G.4. c.85. and effectually to all intents and purposes, as if the said several powers, provisions, clauses, pains, penalties, and forfeitures, were herein and hereby repeated and re-enacted, as to all such cases and places as aforesaid; and that from and after the passing of this act, all and every the constables, churchwardens, and overseers of any such parishes, townships, hamlets, or other places as are situated in and extend into two or more counties, ridings, or divisions, having separate and distinct commissions of the peace as aforesaid, shall be subject to the precepts, warrants, orders, and directions of the several justices of the peace for the respective divisions or parts of such parishes, townships, hamlets, or other places, so far as the same may relate to the making of the returns required by the said recited acts or any of them, and the assessing, levying, and collecting of the proportion of the county rate for such respective divisions or parts of such parishes, townships, hamlets, or other places, or otherwise to the execution of the said recited acts, and of any other acts relating thereto, within the parts of such parishes, townships, hamlets, or other places, as shall be situated within the limits of the jurisdiction of the justices making and issuing such precepts, orders, warrants, and directions, and shall be subject to the same fines, penalties, and forfeitures, for neglect and disobedience of the precepts, warrants, orders, and directions of such justices, so far as the same shall relate to the matters aforesaid or any of them, or otherwise to the execution of the said recited acts or any other acts relating to the assessing, levying, and collecting of the county rate within the limits of the jurisdiction of the justices making and issuing such precepts, warrants, orders, and directions as such constables, churchwardens and overseers, or other officers would by the laws now in force be subject and liable to, if such constables, churchwardens, overseers, or other officers had resided within the limits of the jurisdiction of the justices making and issuing such precepts, warrants, orders, and directions: Provided always, that nothing herein contained shall extend, or be construed, deemed, or taken to extend to authorize any justice or justices of the peace to act in the cases aforesaid, or any of them, beyond the limits of the jurisdiction within which he or they shall be generally appointed and authorized to act as such justices."

Justices not to act beyond their jurisdiction.

In extra-parochial places, where no poor rate is made, justices may appoint persons to tax and assess county rate.

§ 2. And whereas by the said recited act of the 56 *G.* 3., it was enacted, that all messuages, lands, tenements, and hereditaments situate, lying, or being in any extra-parochial place, or other places, whether rated to the relief of the poor or not so rated, although the same might not be deemed rateable to the relief of the poor within such extra-parochial places, or other places where no rate is made for the relief of the poor, should be and the same were thereby declared to be subject to be assessed, taxed, and rated, by and under the order, direction, and authority of justices of the peace, in such and the same manner as the messuages, lands, tenements, and hereditaments within any parishes or places where a rate is made for the relief of the poor; and that the justices of the peace should, in all cases where the same might be necessary, appoint proper persons within such extra-parochial or other places, as directed in and by the said therein recited act of the 55th *G.* 3. for the assessing, taxing, and rating such extra-parochial messuages, lands, tenements, and hereditaments, and levying,

collecting, and paying over such assessments, taxes, or rates under the provisions of the said recited act: And *whereas there are extra-parochial and other places where no rate is made for the relief of the poor, in which there are no messuages, or no person or persons resident proper to be appointed for the assessing, taxing, and rating such extra-parochial or other places, and levying, collecting, and paying over such assessments, taxes, or rates under the provisions of the said last recited act;* and it is expedient that in those cases the justices of the peace should be authorized and empowered, in their discretion, to appoint proper persons, who do not reside within such extra-parochial or other places, to assess, tax, and rate all messuages, lands, tenements, and hereditaments situated in such extra-parochial or other places; it is enacted, "that the justices of the peace in and for any county, riding, or division, shall in all such cases, where they shall deem it necessary, appoint proper persons within such county, riding, or division, as directed in and by the said recited act of the 55th year aforesaid, whether such persons do or do not reside within such extra-parochial or other place as aforesaid, to assess, tax, and rate all such messuages, lands, tenements, and hereditaments as are situated in such extra-parochial or other places as aforesaid; any thing in the said last recited act to the contrary in anywise notwithstanding.

1 & 2 G.4. c.85.

§ 3. And, for the more effectually levying money assessed for the purposes aforesaid, it is enacted, "that the goods of any person assessed, or by the said recited acts, or this or any of them, made liable to pay the rates thereby authorized to be raised and levied, or any proportion thereof, for any county, riding, division, city, borough, town corporate, or place, and refusing to pay, may be levied by warrant of distress, not only in the place for which such assessment was made, but in any other place within the same county or precinct; and if sufficient distress cannot be found within the said county, riding, division, city, borough, town corporate, or place, on oath made thereof before some justice of any other county or precinct (which oath shall be certified under the hand of such justice on the said warrant), such goods may be levied in such other county, riding, division, city, borough, town corporate, or place, by virtue of such warrant and certificate; and if any person shall find him or herself aggrieved by such distress as aforesaid, it shall and may be lawful for such person to appeal to the next general or quarter sessions of the peace for the county or precinct where such assessment was made, and the justices there are hereby required to hear and finally determine the same."

The goods of persons liable to pay rates may be seized by warrant of distress in any other place than the place of assessment, &c.

Appeal to quarter sessions.

§ 4. "In all cases where any penalty, forfeiture, fine, or other money may, under or by virtue of the said recited acts or this act, or any of them, by the warrant of any justice or justices of the peace, be directed to be levied by distress and sale of the goods and chattels of any person or persons, if sufficient distress cannot be found within the limits of the jurisdiction of the justice granting such warrant of distress, on oath thereof made by one witness before any justice of the peace of any other county, riding, division, city, borough, town corporate, or place, (which oath shall be by him certified by indorsement on such warrant,) such penalty, forfeiture, fine, or other money, or so much thereof as may not have been before levied or paid, shall and may, by

Where sufficient distress cannot be found in one county, &c. justices of other counties may indorse the warrant, and direct distress to be levied.

1 & 2 G. 4. c. 85.

virtue of such warrant and indorsement, be raised and levied by the person or persons to whom such warrant of distress shall have been originally directed, by distress and sale of the goods and chattels of such person or persons in such other county, riding, division, city, borough, town corporate, or place; and the money arising by such distress and sale shall be applied and disposed of for such purpose, and in like manner, as if sufficient goods and chattels of such person or persons had been found within the jurisdiction of the justice originally granting such warrant; and if no such distress can be found, such offender or offenders shall and may be forthwith proceeded against according to law."

Justices not accountable for irregularities.

§ 5. "No justice who shall endorse any certificate upon, or authorize the execution of any such warrant of distress, which may not have been granted within his jurisdiction, shall be answerable or accountable for any irregularity which may have been committed or done, in or about the obtaining or granting of such warrant of distress."

12 G. 2. c. 29. Places exempted from part of the rate.

By stat. 12 *G.* 2. *c.* 29. § 5. Where any person, liberty, division, or place hath usually contributed, or is liable to pay, only to one or more of and not to all the rates hereby intended to be raised and thrown into one general rate, the justices at their general or quarter sessions may order and ascertain what proportion thereof shall be assessed on, and paid by such person, liberty, division, or place.

As for instance, where by stat. 22 *H.* 8. *c.* 5. towns corporate are charged for the repairing of bridges within their respective liberties; and the counties for the bridges out of such liberties; in such a case, a town corporate ought not to be charged towards the bridges in the county at large; and consequently ought to have an abatement in the rate charged upon them, in such proportion as the expence of bridges is to the whole expence of the several articles charged upon the said general county rate: as if the expence of bridges be a tenth part of the whole expence, chargeable upon the county rate, then such town corporate shall have an abatement of one shilling for every ten, which it would otherwise be charged with in such rate.

13 G. 2. c. 18. Places exempted from the whole rate.

And by stat. 13 *G.* 2. *c.* 18. § 7. Where any liberties or franchises have commissions within themselves, and are not subject to the county justices, and do not nor did before stat. 12 *G.* 2. contribute to the county rates; the justices within such liberties may exercise the same powers within their liberties, as justices in their counties.

In the case of *Weatherhead* v. *Drewry and others,* (which see *ante, tit.* Constable, p. 707.) it was held that the words "liberties and franchises having commissions of the peace within themselves," contained in stat. 13 *G.* 2. *c.* 18. include "charter justices;" and that by consequence a borough having such justices, may make a rate in the nature of a county rate.

County justices not excluded from rating a district.

In *Bates* v. *Winstanley, M.* 56 *G.* 3. 4 *M.* & *S.* 429. It was decided that a charter giving jurisdiction to borough justices over a district *not within* the borough, without words of exclusive jurisdiction, does not exclude the county justices from rating the district to a county rate.

The proviso in c. 51.

R. v. *W. Clark, E.* 3 *G.* 4. 5 *B.* & *A.* 665. Indictment against defendant, a constable within the city of *Bath*, for not obeying an

order of the sessions of the county of *Somerset*, requiring him, as such constable, to issue out his warrant to the overseers of the poor of the parish of *St. James*, in that city, directing them to collect and levy the sum of 61*l.* for the purposes of the county-rate. Plea, not guilty. At the trial, before *Holroyd* J., at *Dorsetshire* Lent assizes 1822, a verdict was found for the crown, subject to the opinion of the court of K. B. upon a case which stated, that the city of *Bath* was an ancient city, and had in it a body corporate, and possessed many franchises, partly by prescription and partly by charter. By a charter, in 1590, queen *Elizabeth* granted to the mayor, &c. of the said city a prison for keeping all prisoners, committed in any sort howsoever, within the liberties of the said city or the precincts thereof, for any matter, cause, or thing, which ought to be enquired, prosecuted, punished, or determined in the said city; but if any person should be committed for any cause which ought not to be so enquired, &c., then the mayor, &c. *should have power to commit such persons to the common gaol of the county of* Somerset. It further provided, that the mayor, &c. should have power to arrest and examine all felons, thieves, and other malefactors found within the city, and commit them to the county gaol. By another clause, the bailiffs of the city were to have returns of writs, and of all attachments arising within the city; with a *non-intromittas* clause to the sheriff of the county. By another, the mayor, &c. were to have cognizance of all pleas and actions personal, and the mayor, recorder, and two of the aldermen were made justices of the peace, and any three or two of them (of whom the mayor or recorder was to be one) were to have full power to enquire, by the oath of honest and lawful men, &c. of all trespasses, forestallers, regraters, and extortions, committed in any manner or sort howsoever in the said city, &c. and of all those who go or ride armed in conventicles, and of those who lie in wait to maim or kill, &c. and of all such as offend in the abuse of weights and measures, and in selling of victuals; and of all labourers, mendicants, vagabonds, and all other persons whatsoever, who should offend in the said city; and to take view, control, and inspect all indictments whatsoever concerning the premises, and to hear and determine the same, in such manner as the justices of the peace in the county might hear and determine such indictments taken before them; and also that they should have power to enquire, hear, handle, judge, and determine of all and singular other trespasses, offences, defects, and articles, which belong or appertain to the office of a justice of the peace, committed within the city of *Bath*, as fully and largely, and in as ample manner and form, as any other justices of the peace in any other county of *England* have power to hear and determine: so that the justices of the county of *Somerset*, or any of them, should not at any time thereafter, intrude themselves to meddle with any the aforesaid things, causes, matters, defects, offences, or other articles, &c. arising within the said city, but only in default of the mayor, &c. The charter then ordained that the common clerk of the city should be clerk of the peace there; that the mayor should be the coroner, and that the mayor, aldermen, &c. should appoint a chamberlain and receiver, and constables, and other inferior officers within the city. These charters were accepted, and are still in force. The boundaries of the city, as described in the charter of

§ 1. stating that that act shall not give any jurisdiction to the justices of the county over any places situate within the limits of any liberties or franchises having a separate jurisdiction, is confined to franchises having a separate jurisdiction co-extensive with that possessed by the county justices; and, therefore, where the justices of the city of *B.* had no jurisdiction by charter to try felons, it was held that the city of *B.* was liable to the county rate.

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Elizabeth, contained within them three entire parishes, namely, the parish of *St. Peter* and *St. Paul*, the parish of *St. Michael*, and the parish of *St. James*; and they contain also a part of the parish of *Walcot*; which latter parish, although partly within and partly without the city, has but one set of overseers, and one poor's-rate for the whole parish. At the time of issuing and delivering the warrant to the defendant the mayor, recorder, and two aldermen of the city, duly nominated and elected, were justices of the peace in and for the said city, pursuant to the charter of *Elizabeth*, and there was no default of a mayor, recorder, and two aldermen, as such justices and the quarter sessions were regularly held. The corporation, out of their own funds, have built and repair the bridge within the city, called *The Bath Bridge*, and also the city gaol, of which they appoint the chaplain, the surgeon, and the gaoler, and pay their respective salaries, and the expences of the prisoners committed thereto; they also built and repair the guildhall, where the city sessions are regularly held, under the charter of *Elizabeth*, and where all the public business of the city is transacted; they also pay the expences of committing and conveying prisoners to the county gaol for trial for felonies and other offences committed within the city, and which are not cognizable by them, all expences of a like nature incurred without the city being paid out of the county rate. The licenses of all public houses within the city are also granted by the city justices; the city has its own coroner: the fees and expences of its inquests and the expences of passing vagrants are respectively paid by the entire parishes, and also by that part of the parish of *Walcot* which lies within the city, over which the city justices exercise the same power as they do over the entire parishes. Before making the county rate in question, and delivering the warrant to the defendant, the county justices had never rated the city of *Bath*, nor any of the entire parishes lying within the same, to the county rate; but they have rated the entire parish of *Walcot* to the county rate, without making any distinction between the in-part and out-part. Previously to the passing of the act 58 *G*. 3. *c*. 70., the expences for the prosecution of felons for offences committed within the city, were paid by the treasurer of the county of *Somerset*, out of the general rates of the county; but immediately after the passing that act, and from thence until the making of the rate in question, many orders were made at the sessions and assizes on the churchwardens and overseers, &c., for the payment of the expences of prosecutions of felons committed within the city, all of which said orders were duly obeyed; but as soon as the rate was made, which included all the parishes within the city of *Bath*, such orders were discontinued, and the expences of such prosecutions were again ordered to be paid out of the rates of the county at large. The county justices, until the making the county rate and warrant before-mentioned, had never in any respect interfered, or attempted to interfere in any thing that appertained to the office of justice of the peace, arising within either of the said entire parishes, or within the in-part of the parish of *Walcot*, but they have rated the parish of *Walcot*, without making any such distinction as aforesaid. The number of prisoners sent to the county gaols by the city justices is considerable, and the keeping and maintaining such

prisoners, after they are delivered by the city officers at the county gaols, and the charges of their conveyance to and from the assizes and quarter sessions, together with the expences attendant on carrying their several sentences into execution, have always been and still are paid out of the general county rate.—After argument, in the course of which the cases of *James* v. *Green*, 6 *T. R.* 228. *Weatherhead* v. *Drewry*, 11 *East*, 168. and *Bates* v. *Winstanley*, 4 *M. & S.* 429. were cited;—*per Abbott* C. J. I am of opinion, that the city of *Bath* is liable to contribute to the county rate, and that in this case, our judgment should be for the crown. The question depends on the construction to be put upon stat. 55 *G.* 3. *c.* 51. § 1., by which a power is given to the justices of the county to tax every parish, township, and other place, whether parochial or extra-parochial, within the respective limits of their commissions. The first question, therefore, which arises, is, whether the city of *Bath* be within the limits of the jurisdiction of the justices of the county of *Somerset*. Now, it appears from the statement of the case, that they alone have the power of trying felonies committed within the city. It is, therefore, clear, that *Bath* is within the limits of their jurisdiction. Then comes the proviso, which states, that the act shall not give any jurisdiction to the justices of the county over any places situate within the limits of any liberties or franchises having a separate jurisdiction. Then is the city of *Bath* a franchise, "*having a separate jurisdiction?*" I think that these words must mean, "*having a separate jurisdiction co-extensive with that possessed by the county justices.*" Here it is clear, that the justices of *Bath* have no such jurisdiction: for their jurisdiction is by the charter of *Elizabeth* confined to such trespasses, offences, defects, and articles, which do or may belong to the office of a justice of the peace. It is clear from these words, that it does not extend to felony, and therefore, is not co-extensive with that of the county justices. Then, if so, the case does not fall within that part of the proviso; but the proviso goes further, and speaks of places which before the act were "subject to rates in the nature of county rates, or which were exempt from the rates of the county, either in the whole, or in part, under some grant, charter, or local act of parliament." Now it is clear from the case, that the city of *Bath*, previously to stat. 55 *G.* 3., was not subject to any rate in the nature of a county rate, nor do I find it stated, that it was legally exempted by any grant, charter, or local act of parliament. Upon the whole, therefore, I am of opinion, that the city of *Bath* does not fall within the proviso. Nor does the 24th section, as it seems to me, carry the case any further, for that clause only applies to such franchises as have commissions of the peace within themselves, and are not subject to the jurisdiction of the commission of the peace for the counties in which they lie. Here, the city of *Bath* was, in my opinion, subject to that jurisdiction, and our judgment, therefore, must be for the crown. *Bayley* J. The county rate is appropriated to certain specific purposes, and the object of stat. 55 *G.* 3. *c.* 51. being to have a fair and equal rate, it seems to me, that all ought to contribute to it who derive a benefit from it. Now, one of the purposes of the rate is to maintain felons in gaol, and, in this case, persons imprisoned for felonies

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committed within the city of *Bath* are maintained out of the county rate for *Somersetshire*, and according to justice, therefore, the city of *Bath* ought to contribute. The first question is, whether *Bath* be within the limits of the jurisdiction of the county magistrates? Now *primâ facie* their jurisdiction is co-extensive with the county, and if they are excluded from any franchise to a limited extent, they still continue to have jurisdiction there, so far as they are not expressly excluded. From the statement of the case, it is clear, that the county justices have a jurisdiction within the city of *Bath*, as far as the trial of felonies there committed. Then does *Bath* come within the proviso? I think not. The separate jurisdictions there mentioned mean such as are co-extensive with all the purposes for which the county rate is payable, and extend to all the crimes over which the county magistrates have jurisdiction. But that is not the case here. There ought, therefore, to be judgment for the crown. *Holroyd* J. concurred. Judgment for crown.

12 G. 2. c. 29. High constable to make demand of the overseers, &c.

Which said rates the high constable shall, at such times as the said justices, by their order in sessions (A), shall direct, demand of the churchwardens and overseers; which demand shall be made in writing (B), and given to them, or any of them, or left at their dwelling houses, or affixed on the church doors by the said high constables. Whereupon the said churchwardens and overseers shall, in thirty days after such demand made, or the money collected for the relief of the poor, pay the sums so assessed on each parish or place. Stat. 12 *G.* 2. *c.* 29. § 2.

(A)
(B)
Overseers to pay in 30 days after demand.

R. v. *The Justices of the West Riding of Yorkshire*, 12 *East*, 117. In this case, there were two questions directed to be tried. 1. Whether the said two townships of *Hartishead* and *Clifton*, in the W. R., did or did not before and since stat. 12 *G.* 2. *c.* 29. form *one* constablery known by the name of *H. cum C.* for the purpose of raising such rates? 2. Whether *H.* and *C.* were or were not before and since that statute two separate townships, for the purpose of raising such rates? And it was admitted that before the statute these two townships usually contributed between themselves in a certain proportion to the county rate imposed upon the two separately. The jury found that there was an union of the two townships in one joint constablery. And upon this a motion was made for a *mandamus* to the defendants, to make at the next quarter sessions an order upon the constablery of *H.* with *C.* to levy a sum by *an equal rate* for the proportion of the said constablery towards the county rates. And this application was granted by the court. — And *per* Ld. *Ellenborough* C.J. By stat. 12 *G.* 2. *c.* 29. § 1. the proportions of the general rate as between the several towns, parishes, and places which had before been separately assessed, were to be preserved; but the money was to be raised upon each by one aggregate rate, instead of by the several distinct rates before leviable under different acts of parliament, for distinct purposes. Now *H.* and *C.*, though acting as two townships for some purposes, yet for the purpose of county rates, and *quoad* the act of the 12 *G.* 2., they constituted but one place. The § 2. must be understood of parishes and places in which one general poor's rate is collected, and cannot therefore apply to a case like the present, where there is no such general fund raised upon the entire

district which is assessed to the county rate. The case, therefore, must come within the provision of the 3d section, that where there is no poor's rate, that is, no poor's rate co-extensive with the district assessed, the county rate shall be levied by the petty constable, "in the same manner as the money for the relief of the poor is by law to be rated or levied," that is, by *equal* taxation of the inhabitants, &c. of the place rated. The rate, therefore, must be levied equally on the whole of this artificial place or district, being that on which the county rates had, before the act, been usually assessed as if it had been one parish. *Grose* J. and *Le Blanc* J. agreed, as did *Bayley* J., who added, that by *proportions*, the legislature only referred to the proportions between the several districts before assessed to the county rates, with reference to the county at large.

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And by stat. 12 *G.* 2. *c.* 29. § 2. If the churchwardens or overseers, or any of them, shall neglect or refuse so to pay, the high constable shall levy the same by distress (C, D,) and sale of the goods of such churchwardens or overseers so refusing or neglecting, by warrant of two or more justices residing in or near such parish or place.

12 G. 2. c. 29. To be levied by distress. (C, D)

§ 2. And the receipt of such high constable shall be a full discharge to the churchwardens and overseers, or other persons paying the same.

High constable's receipt.

§ 3. Where there is no poor rate, the justices, in their general or quarter sessions, shall by their order direct the sum assessed on such parish, township, or place to be rated and levied by the petty constable, or other peace officer, *as money for relief of the poor is by law to be rated or levied;* which sum so rated and levied shall be paid by him to the high constable, and shall be demanded of, paid by, or levied on such petty constable, in the same manner as before of the churchwardens and overseers. And if any petty constable shall pay such sum before he hath collected it, he may afterwards rate and levy the same, or may be allowed and reimbursed the same out of any constable's or other rate, which the justices in their sessions shall order and direct. *Vide* stats. 55 *G.* 3. *c.* 51. § 8. and 56 *G.* 3. *c.* 49.

Case where there is no poor rate.

As money for relief of the poor is to be rated or levied.] That is to say, by taxation of every inhabitant, parson, vicar, and other, and of every occupier of lands, houses, tithes, coal mines, or saleable underwoods. Stat. 43 *El. c.* 2. § 1.

43 El. c. 2.

By stat. 12 *G.* 2. *c.* 29. § 4. And whereas it will be inconvenient to many towns, parishes, and places, in the counties of *York*, *Derby*, *Durham*, *Lancaster*, *Chester*, *Westmorland*, *Cumberland*, and *Northumberland*, that the said rates shall be paid out of the poor rate, the justices at the general or quarter sessions, *if they shall think convenient*, may order the sum assessed on any such town, parish, or place, to be paid by and levied on the petty constable (B b) in such manner as is above directed, in cases where no rate is made for the poor.

12 G. 2. c. 29. Northern counties. (B b)

If they shall think convenient.] By which words the justices in those counties may order the rate to be paid by either of the two methods before mentioned, according to their discretions; that is to say, either by the churchwardens and overseers out of the poor rate, or by the petty constables by an assessment after the manner of the poor rate.

12 G. 2. c. 29. High constable to pay to the treasurer.

By stat. 12 G. 2. c. 29. § 6. The said high constables, at or before the next sessions respectively after they have received the money, shall pay the same to the treasurer; and the money so paid shall be deemed the public stock.

Treasurer's receipt.

§ 9. The treasurer's receipt shall be a sufficient discharge to the high constable.

High constables to levy and account for the rates.

Or on default to be committed to gaol. (E)

And by § 8. It is enacted, that "the high constables shall demand and levy such rates and assessments in manner before directed, and shall account for the same before the justices at their general or quarter sessions, if required, in like manner as the treasurers are directed to account; and in case of neglect or refusal,(E) it shall be lawful for the said justices in sessions to commit such high constables to gaol, there to remain without bail until they shall have caused such rates or assessments to be demanded or levied, and shall have rendered true accounts; and in case it shall appear by such accounts that any sum of money is remaining in their hands, and if they shall neglect or refuse to pay the same over into the hands of the treasurers, or otherwise, if required by order of the justices in sessions; then it shall be lawful for the said justices to commit such high constable to gaol, there to remain without bail, until full payment of the money due; and all the accounts and vouchers of the said treasurers and high constables shall, after having been passed by the justices in sessions, be deposited with the clerk of the peace for the time being of each county, or the town-clerk, high bailiff, or other chief officer of any city, town corporate, or liberty, who are required to keep them among the records of such county, city, town corporate, or liberty, to be inspected from time to time by any of the said justices, as occasion shall require, without fee or reward.

Vouchers to be kept among the records of the county, &c.

Petty constables and others to account.

§ 17. The justices, at their general or quarter sessions, may oblige by their order the petty constables, or any other person empowered to levy, collect, or receive any sum for the purposes aforesaid, and who have any sum in their hands, to account and pay over the same, in like manner as the high constables.

Treasurer's disbursements.

§ 6. And the treasurer shall pay so much of the money in his hands to such persons as the justices in sessions shall by their order from time to time appoint, for the uses and purposes of the said above-mentioned acts, and for any other uses and purposes to which the public stock of any county, city, division, or liberty is or shall be applicable.

If a fine be imposed on a county which the justices think illegal, they may defray the expence of litigating the question out of the county stock.

And for any other uses and purposes to which the public stock is applicable.] *R.* v. *Inhab. of Essex*, 4 *T. R.* 591. The sessions had ordered money to be advanced by the treasurer to defend the county in a litigation respecting a fine of 500*l.* imposed on them by Ld. *Loughborough*, at the assizes, for not repairing the county gaol, and which had been estreated into the exchequer. On being removed by *certiorari*, it was objected that the magistrates could apply the public money to such purposes only as are specifically provided for by act of parliament, or sanctioned by long usage.—But the court held, that the order was good; for wherever a duty is imposed on a county, and where costs necessarily and incidentally arise in questioning the propriety of acts done to enforce that duty, the magistrates, who have the superintendence over the county purse, have necessarily a right to defray such expences

out of the county stock. And *Buller* J. said, in his opinion, the true construction of the act is, that the necessary expences of every thing relating to the subjects therein mentioned must be borne by the county, and paid out of the county stock. If it were otherwise, the active magistrates of a county would be put in a perilous situation in a variety of cases that might happen. Upon general grounds, when a county is attacked, they should have the power of defending themselves if unjustly attacked; and whether or not there be just grounds on which they may defend themselves, it must, according to the words of the statute, and by necessary implication, be determined by the justices acting at the sessions, in whose hands the distribution of the county rate is vested.

12 G. 2. c. 29.

But the sessions cannot order the costs of a prosecution, though carried on under the direction of a magistrate, for a misdemeanor, to be paid out of the county rate. *R.* v. *W. R. of Yorkshire*, 7 *T. R.* 377. *Vide ante*, *tit.* Costs, p. 799.

R. v. *The Just. of Flintshire*, *E.* 3 *G.* 4. 5 *B.* & *A.* 761. A rule *nisi* was obtained in last *Mich.* term for a *certiorari* to remove an order of sessions of the county of *Flint*, dated 12th *July* last, for levying and paying into the hands of the treasurer of that county 200*l.* 5*s.*, to enable him to pay that sum, in part payment of the claim of Messrs. *Sankey*. It appeared that, by a former order of sessions, the treasurer had been empowered to borrow from Messrs. *Sankey*, who were bankers, the sum of 1000*l.*, for carrying on the public works within the county, to be repaid by instalments. This money had been advanced, from time to time, in 1817 and 1818, and repaid in account, but further advances being made, the balance remaining due to the bank was 447*l.*, in part payment of which this order was made. The affidavits on the other side stated, that the whole money had been, in fact, laid out for county purposes. The court (after hearing counsel against, and in support of the rule,) made the rule absolute; observing, that this was a rate to reimburse persons for a debt previously contracted, which was clearly bad, inasmuch as *the justices had no right*, except by following the provision of particular acts of parliament, which had not been done here, *to anticipate the county rates*, and so to make the expence ultimately fall on different persons from those who were by law liable at the time it was incurred. Writ of *certiorari* granted.

An order of sessions for levying and paying to the treasurer of the county a sum to enable him to reimburse certain persons for an antecedent debt, although such debt had been incurred for county purposes, is bad.

Justices have no right to anticipate the county rates.

By stat. 12 *G.* 2. *c.* 29. § 10. No new rate shall be made until it appear by the treasurer's accounts, or otherwise, that three-fourths of the money collected have been expended for the purposes aforesaid.

12 G. 2. c. 29. New rate when to be made.

§ 12. If the churchwardens and overseers of any parish or place shall think such parish or place is over-rated, they may appeal to the next general or quarter sessions against such part of the rate only as may affect such parishes or places; but such rate, upon the appeal, shall not be quashed in regard to any other parishes or places.

Appeal.

§ 21. No *certiorari* to remove any rates, or any orders or other proceedings of the sessions touching such rates, shall be granted but upon motion the first week of the next term after the time for appealing from such rates or orders is expired, and on making it appear to the court by affidavit or otherwise that the merits of

Certiorari.

12 G. 2. c. 29. the question on such appeal or orders will by such removal come properly in judgment. And no such *certiorari* shall be allowed, until sufficient security be given to the treasurer, in the sum of 100*l.*, to prosecute the *certiorari* with effect, and to pay the costs if the rates or orders shall be confirmed. Nor shall any such rates, orders, or proceedings be quashed for want of form only.

Money not returned. § 18. And no action shall be commenced against any person who shall have collected or received any money on any rate which shall be quashed on a *certiorari* or otherwise, for any money collected or received on such rate before the *certiorari* was brought; but the persons who have paid on such rate more than they ought to have paid shall be repaid, or have the same allowed in the next rate.

A.

A. Justice's Precept to High Constable to collect County Rate.

To the high constable of the hundred of ———, in the county of ———.

County of ——— to wit. } *THESE are, in his majesty's name, to command you, within eight days after receipt hereof, to demand, collect, and receive of and from the churchwardens and overseers of the poor of the several parishes and places here under-named, (being within your said hundred,) the several and respective sums of money hereunder set down and expressed opposite to and against the names of such parishes and places; the said several sums being respectively charged and assessed thereon in and by a rate or order made at the last general quarter sessions of the peace held at* ———, *in and for the said county, for and towards one general rate or assessment made for raising such sum and sums of money within the hundred of* ———, *in the said county, as may be sufficient to answer the several county charges, expences, and purposes, to which the public stock of the county is applicable by law; and that upon the receipt of the said several sums of money, you pay the same at or before the next general quarter sessions of the peace to be held at* ———, *in and for the said county, into the hands of* G. B. *esquire, the treasurer appointed to receive the same. And if any of the churchwardens and overseers of the said several parishes and places shall refuse or neglect to pay the same within thirty days next after you shall have demanded the same in writing given to the said churchwardens or overseers of the poor, or any of them, or left at their or any of their dwelling-house or houses, or affixed on any of the church-doors of such parishes or places to which such churchwardens or overseers shall belong, that then you inform us, or some other of his majesty's justices of the peace for the said county thereof, that such further proceedings may be had and taken as the law directs. And therefore fail not at your peril. Given under our hands and seals, at* ———, *in the said county, the* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———.

J. P.
W. P.

B. High Constable's Warrant to levy the Rate. B.

Westmorland. Kendal Ward. } To the churchwardens and overseers of the poor of the township [*or* parish] of ———, in the said county.

BY virtue of an order of his majesty's justices of the peace in and for the said county, in their general quarter sessions assembled, you are hereby required in thirty days' time from your receipt of this precept, or otherwise having had due notice thereof, to pay to me out of the money by you collected or to be collected for the relief of the poor, the sum of ———, *being the proportion of your said township* [or *parish*] *for and towards the general county rate. And herein you are not to fail, on the peril that shall ensue thereof. Given under my hand the* ——— *day of* ———.

John Bracken, *High Constable.*

Or, in the northern counties above mentioned, the justices, if they think proper, instead of ordering the money to be paid by the churchwardens and overseers, may order it to be paid by the petty constables; and then the high constable's precept to the petty constables may be thus:

(B b.) (B b.)

Westmorland. Kendal Ward. } To the constable of ———, in the said county.

BY virtue of an order from his majesty's justices of the peace in and for the said county, in their general quarter sessions assembled, you are hereby required to raise the sum of ——— *within your constablewick, for which you are to make an equal rate within your said constablewick, and to levy the same in such manner as money for the relief of the poor is by law to be rated or levied; which said sum you are to pay unto me in thirty days' time from your receipt of this precept, or otherwise, having had due notice thereof; the same being the proportion of your said constablewick, for and towards the general county rate.*

C. Summons of Overseers of the Poor, for not paying their Proportion of the County Rate to the High Constable. C.

County of ——— to wit. } To the overseers of the poor of the parish of ———, in the said county.

WHEREAS information and complaint hath been made before me, one of his majesty's justices of the peace for the said county, by ———, *high constable of the hundred of* ———, *in the said county, that you the said overseers of the poor of the said parish of* ——— *were in pursuance of his warrant, for that purpose to you directed, ordered and required to levy, collect, and pay the sum of* ———, *within the space of thirty days from the date of the said warrant, being the quarterly proportion of your said parish, for and towards the general county rate, and that you, the said overseers*

of the poor of the said parish, have refused and neglected, and do refuse to pay the same.

These are therefore to summon you, the said overseers of the poor of the said parish of ———, *to appear before me or others of his majesty's justices of the peace for the said county, at* ———, *in the said county, on* ——— *next, at the hour of* ——— *in the forenoon, to answer to the said information and complaint, and to show cause why a warrant of distress should not issue forthwith to levy the said sum of* ——— *upon your goods and chattels, according to the directions of the statute in such case made and provided. Given under my hand and seal, the* ——— *day of* —, *in the year of our Lord one thousand eight hundred and* ——.

D. Warrant of Distress to levy a County Rate, on the Overseers of the Poor, under Stat. 55 G. 3, c. 51.

County of ——— to wit. } To the high constable of the hundred of ———, in the said county of ———.

WHEREAS *at the general quarter sessions of the peace, holden in and for the said county of* ———, *on the* ——— *day of* ———, *a rate or assessment was duly made, pursuant to an act of parliament made and passed in the fifty-fifth year of the reign of his late majesty king* George *the third, for the purpose therein in that behalf mentioned; And the parish of* ———, *in the said county, was thereby duly rated and assessed in the sum of* ———*l. of lawful money of* Great Britain; *And whereas by virtue of an order of his majesty's justices of the peace of the said county, in their general quarter sessions assembled, on the* ——— *day of* ———, *a warrant was duly issued to you, the high constable of the hundred of* ———, *in the said county, ordering and requiring you to issue your warrant to the overseers of the poor of the said parish, to levy, collect, and pay the said rate or assessment of* ———*l. to you, the said high constable, within the space of* ——— *then next following, which you were thereby directed to pay within the space of* ——— *to the treasurer of the county for the time being, to be applied and disposed of in the manner and for the purposes in the said last-mentioned warrant in that behalf mentioned; And whereas the overseers of the poor of the said parish have neglected and refused, and still refuse to pay the same to you, the said high constable, and you have thereof made complaint to me,* A. B., *esquire, one of his majesty's justices of the peace of the said county; And whereas* C. D., E. F., *and* G. H., *the overseers of the poor of the said parish, having appeared before me, in pursuance of my summons for that purpose, have not shewed to me any sufficient cause why the same should not be paid; These are therefore to require you forthwith to make distress of the goods and chattels of them the said overseers of the poor of the said parish of* ———, *and if within the space of* [not less than four nor exceeding eight] *days next after such distress by you taken, the sum of* ———*l., together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money rising by such sale, that you detain the said sum of* ———*l.,*

and also your reasonable charges of taking, keeping, and selling the said distress, rendering to them, the said overseers, the overplus on demand. Given under my hand and seal, &c.

J. P. (L. S.)

E. Summons of High Constable for not paying County Rate to the Treasurer of the Public Stock.

E.

County of ——— to wit. } To ———, high constable of the hundred of———, in the said county.

WHEREAS information and complaint hath been made before us, two of his majesty's justices of the peace for the said county, by ———, gentleman, treasurer of the public stock of the said county of ———, that you, the said ———, have neglected and refused to pay to the said treasurer the sum of ———, being the amount now due and owing from you to the public stock of the said county, and which said sum of ——— has or ought to have been received and levied by you from the churchwardens and overseers of the poor of the respective parishes and townships within your said hundred of ———.

These are therefore to summon you, the said ———, to appear before us or others of his majesty's justices of the peace for the said county, at ———, in the said county, on ——— next, at the hour of ——— in the ———noon, to answer to the said information and complaint, and to be further dealt with according to law. Given under ——— hands and seals, the ——— day of ———, in the year of our Lord one thousand eight hundred and ———.

County Treasurer.

[11 G. 2. c. 20. — 12 G. 2. c. 29. — 55 G. 3. c. 51.]

BY stat. 12 G. 2. c. 29. § 6. The treasurers of counties shall be persons resident in the county or division, and shall be appointed by the justices at their general or quarter sessions; first giving sufficient security to be accountable for the money which shall be paid to them in pursuance of this act (for levying of county rates), and to pay such sums as shall be ordered by the justices in sessions, and for the due and faithful execution of the trust reposed in them.

12 G. 2. c. 29. Treasurer how chosen.

R. v. The Justices of Herefordshire & the County Treasurer of the same Shire, M. 60 G. 3. 1 *Chitt. Rep.* 709. *W. E. Taunton* moved for a writ of *quo warranto*, to be directed to the county treasurer of *Herefordshire*, calling upon him to show by what authority he held the office of county treasurer. This motion was founded upon a suggestion that the election of the said county treasurer was void, inasmuch as one of the justices of the peace, who voted at the election, had not at the time of the election duly qualified himself by taking the oath prescribed by stat. 18 *G.* 2. *c.* 20. *The* court immediately interposed, and said that a writ of *quo warranto* would not lie in this case; and without some authority being

Quo warranto will not lie against a county treasurer to show by what authority he holds the office, if he has been *de facto* elected by the justices at quarter sessions; nor will *mandamus* lie

R. v. Js. of Herefordshire.

to the justices in sessions to make a new election of a county treasurer, on the ground that one of the justices who had voted at the election had not taken the qualification oath prescribed by stat. 18 G. 2. c. 20. prior thereto, for the acts of the justice are not void, although he may be liable to penalties.

cited for such a purpose, they could not now for the first time assume an authority which had not hitherto been exercised. They could grant a *mandamus* to the justices in sessions to elect a county treasurer where the office was void, but it being stated at the bar that there was a county treasurer elected *de facto*, they could not call upon that person to show by what authority he held the office. Writ refused. *W. E. Taunton* then shaped his motion anew, and applied for a *mandamus* to the justices at sessions to elect another county treasurer in the room of the gentleman already appointed, on the like ground stated in his first motion, contending that the election which had taken place was of no effect, inasmuch as the acts of the justice already alluded to were null and void; and he relied upon stat. 18 *G.* 2. *c.* 20., which declares that no person shall be capable of acting as a justice of the peace, who shall not before he acts at the sessions of the county take and subscribe the qualification oath therein set forth. *Abbott* C. J. I am of opinion that we ought not to grant a *mandamus* in this case. The objection to the appointment of the county treasurer is, that one of the justices who voted at the election had not previously taken the qualification oath, and, consequently, that the act of that justice is void, so as to annul the election. We cannot grant a *mandamus* to fill up such an office as this, unless it is actually void. Without looking at the wisdom of the rule, this court does not grant a *mandamus* to appoint to an office which is already full. If it can be shown that the office is filled *colourably* only, or by fraud, the court would consider the appointment as invalid; but even then we should require a very strong case to be made out to justify our interposition. This, however, is not a case in which any thing amiss appears to have been done, and we cannot undo the act of the justices by commanding them to make a fresh appointment. This office is full *de facto*, and we cannot say that the act of the justice, who had not taken the qualification oath, is void. In a very few weeks (*a*) the acts of this magistrate would be rendered completely valid by an indemnity act, and he will be a good justice. *Bayley* J. The acts of the justice are valid, although he may be liable to certain penalties. Can it be contended that, if a magistrate who has taken the qualification oath that he is worth 100*l*. *per annum*, and from circumstances is afterwards reduced to 80*l*., and he commits a man after his income is so reduced, an action will lie against a gaoler for taking the man into his custody? If that cannot be contended, the argument here fails. The construction to be put upon stat. 18 *G.* 2. *c.* 20. is, that the magistrate shall be only so far disqualified from acting, that he shall be subject to certain penalties if he does act. In this case the acts of the justice are valid, though he may be liable to penalties for not having taken the oath prescribed by the statute. — *Holroyd* J. The statute merely operates as a personal prohibition, declaring that it shall be unlawful for the magistrate himself to act, and he is punishable for doing that which the statute prohibits him from doing; but his acts are not void. R. R.

(*a*) Parliament was sitting.

11 G. 2. c. 20. His election to be certified into the K. B.

By stat. 11 *G.* 2. *c.* 20. § 3. That the treasurers may be the better amenable to the court of K. B. with regard to the payment of the money for relief of the prisoners of the K. B. and Marshalsea prisons, every person who shall be elected treasurer of any county shall, in thirty days after his election, transmit his

name and place of abode to the clerk of the crown in the court of K. B., to be by him entered or registered, for which entry no fee shall be taken; and if such treasurer shall neglect or refuse so to do, then, upon the report of the said clerk of the crown, the said court may make a rule upon him, requiring his performance; which shall be enforced as other rules of the said court, at the charge of such treasurer.

11 G 2. c. 20.

By stat. 12 G. 2. c. 29. § 12. The justices at general or quarter-sessions may continue the treasurer from time to time in his office, and remove him at their pleasure, and appoint another in his place; and may allow him a salary not exceeding 20*l.* a-year, to be paid out of the county rates.

12 G. 2. c. 29. Continuance in his office; and his salary.

But by stat. 55 G. 3. c. 51. § 17. After reciting, that whereas the allowance which the justices of the peace are authorised to make to the treasurer or treasurers, stands limited by stat. 12 G. 2. c. 29. to a sum not exceeding 20*l.* a-year; and that such sum has been in some, and may be found in many, cases inadequate to remunerate him or them for such care and pains; so much of the said act as limits the said allowance to 20*l.* a-year is repealed; and it is enacted, that "it shall and may be lawful for the said justices of the peace, at their respective general or quarter sessions, or the greater part of them then and there assembled, to allow to the treasurer or treasurers of their counties, and to every of them insisting on the same, such reasonable sum or sums of money for such purpose as aforesaid, as they in their discretion shall think fit, of which they are hereby empowered to direct the payment out of the monies arising by the rates of their respective counties: provided always, that no such augmentation of allowance shall be made at any such general or quarter sessions, unless application for such augmentation shall have been made by the said treasurer or treasurers *or* (*a*) the justices of the peace at some previous general or quarter sessions assembled, and unless notice of the intention of taking the said augmentation into consideration shall have been advertised for three successive weeks, in some newspaper usually circulating in such county, in the month immediately preceding the time fixed for considering the same."

55 G. 3. c. 51. Further salary.

(*a*) Qu. *to.*

Notice to be advertised in some county newspaper for three successive weeks in the month preceding the time fixed for considering the same.

By stat. 12 G. 2. c. 29. § 7, 8. And the treasurer shall keep books of entries of the several sums by him received and paid; and shall deliver in a true and exact account upon oath, if required, of his receipts and disbursements, distinguishing the particular uses to which the several sums have been applied, to the justices at every general or quarter sessions, and shall lay before them the proper vouchers for the same: which accounts and vouchers, after having been passed by the said justices, shall be deposited with the clerk of the peace, to be kept amongst the records, to be inspected by any of the justices without fee.

12 G. 2. c. 29. His account.

§ 9. And the discharge of the justices, by their order at their general or quarter sessions, shall be a sufficient release and discharge to such treasurer.

And discharge.

By stat. 55 G. 3. c. 51. § 18. it is enacted, "That the several treasurers of counties, or of divisions of counties, shall, and they are hereby required, once in every year, to publish in some one of the newspapers usually circulating in the county or division of the county in which they respectively act, a true and accurate

55 G. 3. c. 51. Treasurers to publish once every year abstract of the accounts.

15 G. 3. c. 51.

abstract of the account of their receipts and expenditures, under their several heads, for the year immediately preceding the publication of such abstract, signed by the justices of the peace who shall have audited the same, under a penalty of 50*l.* for every omission of such publication."

Customs.

THE laws relating to the customs, so far as justices of the peace, constables, and other such officers are concerned therein, being considerably connected with the laws of excise, it is thought proper to refer this subject to the title Excise; where the whole will be more clearly comprehended under one view.

Custos Rotulorum.

[37 H. 8. c. 1.—3 & 4 Ed. 6. c. 1.—1 W. c. 21.]

THE *custos rotulorum* is he that hath the keeping of the rolls or records of the sessions. He is always a justice of the peace and *quorum* in the county where he hath his office. He is a man, for the most part, especially picked out either for wisdom, countenance, or credit. He is the principal *civil* officer in the county, as the *lord lieutenant* is the chief in *military* command. 4 *Blac. Com.* 272.

By stat. 37 *H.* 8. *c.* 1. (which was altered by stat. 3 & 4 *Ed.* 6. *c.* 1. but restored by stat. 1 *W. c.* 21.) No person shall be appointed to the office of *custos rotulorum*, but such as shall have a bill signed with the king's hand for the same; which bill signed shall be a sufficient warrant to the lord chancellor to make a commission, assigning and authorising thereby the same person to be *custos rotulorum*, until the king hath by another bill with his own hand appointed one other person to have the same office by himself or his sufficient deputy, learned in the laws, and meet and able to supply the said office.

In pursuance whereof, the last clause in the commission of the peace is generally to this effect: " Lastly, we have assigned you the aforesaid ——— keeper of the rolls of our peace in our said county, and therefore you shall cause to be brought before you and your said fellows, at the days and places aforesaid, the writs, precepts, processes, and indictments aforesaid, that they may be inspected, and by a due course determined, as is aforesaid."

Ought to attend sessions.

The *custos rotulorum*, by virtue of his office, having the custody of the rolls of session, ought to attend there by himself or deputy, who is the clerk of the peace. *Dalt. c.* 185. *p.* 458.

Cutlers.

[59 G. 3. c. 7.]

59 G. 3. c. 7.

BY stat. 59 *G.* 3. *c.* 7. to regulate the cutlery trade in *England;* reciting that "whereas knives, forks, razors, scissors, shears, and other cutlery wares, edge-tools, and hardware requiring a cutting edge, forged and formed of wrought steel, and iron and steel, have for many years been a great branch of trade in *England;* and such articles being esteemed in foreign countries for their superior quality, great quantities thereof have been sent to foreign markets: and whereas a practice prevails of casting or forming in a mould from cast iron, knives, knife-blades, forks, razors, razor-blades, scissors, shears, and other articles of cutlery, edge-tools, and hardware requiring a cutting edge, and some of such articles are, by a chemical process, previous to the finishing and polishing thereof, made to resemble so nearly the like sort of articles wrought of steel, and iron and steel, as scarcely to be distinguishable from wrought steel, and iron and steel, even by persons skilled in the manufactory of cutlery, edge-tools, and hardware;" it is enacted, § 1. that it shall be lawful for all and every person and persons who shall make, forge, form, or manufacture, or cause, direct or procure to be made, forged, formed, or manufactured, by means of the hammer, any knives, knife-blades, forks, razors, razor-blades, scissors, shears, and other articles of cutlery, edge-tools, and hardware requiring a cutting edge of wrought steel, or of iron and steel, to mark, strike, stamp, grave, or impress, or cause, direct, or procure to be marked, struck, stamped, graved, or impressed, in or upon any part of every such knives, knife-blades, forks, razors, razor-blades, scissors, shears, and other articles of cutlery, edge tools and hardware requiring a cutting edge, so forged and formed by means of the hammer, of wrought steel, and of iron and steel, the figure or form of a hammer, at any time, and not at any other time except as hereinafter provided, after the forging, and previous to the same respectively being ground or polished, so as to denote that such knives, knife-blades, forks, razors, razor-blades, scissors, shears, and other articles of cutlery, edge-tools, and hardware requiring a cutting edge, are so formed by means of the hammer, of wrought steel, and iron and steel, and so as to distinguish the same articles from such articles cast or formed in a mould, or otherwise than by means of the hammer.

Where articles are formed by the hammer, manufacturers to have the privilege of marking them with the figure of a hammer.

§ 2. Provided, that it shall be lawful for every person who shall, on the passing of this act, have in his custody or possession, any knives, knife-blades, forks, razors, razor-blades, scissors, shears, and other articles of cutlery, edge-tools, and hardware requiring a cutting edge, made, forged, formed, or manufactured by means of the hammer, of wrought steel, or of iron and steel, at any time within the space of six calendar months next after the passing of this act, to mark, strike, stamp, grave, or impress, or cause, direct, or procure to be marked, struck, stamped, graved, or impressed, in and upon

Persons having manufactured articles in their possession, empowered to mark the same with the figure of a hammer.

59 G. 3. c. 7.

any part of such knives, knife-blades, forks, razors, razor-blades, scissors, shears, and other articles of cutlery, edge-tools and hardware requiring a cutting edge, so forged and formed by means of the hammer, of wrought steel, and of iron and steel, so in his, her, or their possession, the figure or form of a hammer, so as to denote that such knives, knife-blades, forks, razors, razor-blades, scissors, shears, and other articles of cutlery, edge-tools, and hardware, requiring a cutting edge, were so formed by means of the hammer, of wrought steel, or of iron and steel, and so as to distinguish the same articles from such articles cast or formed in a mould or otherwise than by means of the hammer.

Unlawful for persons casting cutlery wares, edge-tools, and hardware requiring a cutting edge, to mark with the figure of a hammer, &c. or the words *steel*, *shear steel*, *&c.* or to sell, &c. such cast articles so marked.

§ 3. And it shall not be lawful for any person or persons to cast, mark, strike, stamp, grave, or impress, or cause, direct, or procure to be cast, marked, struck, stamped, graved, or impressed, in or upon any part of any knives, knife-blades, forks, razors, razor-blades, scissors, shears, or any other cutlery articles whatsoever, edge-tools or hardware requiring a cutting edge, which shall be cast or formed in a mould, or formed otherwise than by means of the hammer, either at the time of casting or forming such articles in the mould, or otherwise than by means of the hammer, or subsequently thereto and previous to the *bonâ fide* sale thereof to the user, the figure or form of a hammer, or any symbol or device resembling a hammer, or having any similitude thereto, nor to have in his, her, or their possession, for the purpose of sale, nor to sell, expose, or offer to sale, or cause, direct, or procure to be sold, exposed or offered to sale, any knives, knife-blades, forks, razors, razor-blades, scissors, shears, and other articles of cutlery, edge-tools, and hardware requiring a cutting edge, which shall have been cast or formed in a mould, or otherwise than by means of the hammer, having marked or struck thereon the figure or form of a hammer, or any symbol or device resembling a hammer, or having any similitude thereto; and all and every person and persons who shall cast, mark, strike, stamp, grave, or impress, or cause, direct, or procure to be cast, marked, struck, stamped, graved, or impressed, in or upon any part of any knives, knife-blades, forks, razors, razor-blades, scissors, shears, and other articles of cutlery, edge-tools, and hardware requiring a cutting edge, which shall have been cast or formed in a mould, or otherwise than by means of the hammer, either at the time of casting or forming thereof, or subsequently thereto, and previous to the *bonâ fide* sale thereof to the user, the figure or form of a hammer, or any symbol or device resembling a hammer, or having any similitude thereto; or who shall have in his, her, or their possession for the purpose of sale, or who shall sell, expose, or offer to sale, or cause, direct, or procure to be sold, exposed, or offered to sale, any knives, knife-blades, forks, razors, razor-blades, scissors, shears, and other articles of cutlery, edge-tools and hardware requiring a cutting edge, which shall have been cast or formed in a mould, or otherwise than by means of the hammer, having marked or struck thereon the figure or form of a hammer, or any symbol or device resembling a hammer, or having any similitude thereto, shall, in all and every the cases aforesaid, forfeit all and every such knives, knife-blades, forks, razors, razor-blades, scissors, shears, and other articles of cutlery, edge-tools, and hardware requiring a cutting edge, having thereon the figure or form of a

hammer, or any symbol or device resembling a hammer, or having any similitude thereto, together with the sum of 5*l.* for any quantity not exceeding one dozen of such articles so marked, struck, sold, or exposed to sale; and for any quantity of such articles exceeding one dozen, 5*l.* for every one dozen thereof; such sum and sums respectively to be levied, recovered, and applied as hereinafter directed.

50 G. 3. c. 70.

§ 4. And it shall not be lawful for any person or persons to cast, mark, strike, stamp, grave, or impress, or cause, direct, or procure to be cast, marked, struck, stamped, graved, or impressed, in or upon any part of any knives, knife-blades, forks, razors, razor-blades, scissors, shears, and other articles of cutlery, edge-tools, and hardware requiring a cutting edge, forged and formed with the hammer, of wrought steel, or of iron and steel, or cast in a mould, either at the time of forging or casting such articles or subsequently thereto, previous to the *bonâ fide* sale thereof to the user, any word or words which shall or may denote or indicate the quality of such articles to be otherwise than the real and true quality thereof; nor to have in his, her, or their possession for the purpose of sale, nor to sell, or expose, or offer to sale, or cause, direct, or procure to be sold, exposed, or offered to sale, any knives, knife-blades, forks, razors, razor-blades, scissors, shears, and other articles of cutlery, edge-tools, and hardware requiring a cutting edge, forged and formed with the hammer, of wrought steel, and iron and steel, or cast in a mould, having marked thereon any word or words which shall or may denote or indicate the quality of such articles to be otherwise than the real and true quality thereof; and all and every person or persons who shall cast, mark, strike, stamp, grave, or impress, or cause or procure to be cast, marked, struck, stamped, graved, or impressed, in or upon any part of any knives, knife-blades, forks, razors, razor-blades, scissors, shears, and other articles of cutlery, edge-tools, and hardware requiring a cutting edge, forged or formed with the hammer, of wrought steel, or iron and steel, or cast in a mould, either at the time of forging or casting or subsequently thereto, previous to the *bonâ fide* sale thereof to the user, any word or words which shall or may denote or indicate the quality of such articles to be otherwise than the real and true quality; or who shall have in his, her, or their possession for the purpose of sale, or shall sell, expose, or offer to sale, or cause, direct, or procure to be sold, exposed, or offered to sale, any knives, knife-blades, forks, razors, razor-blades, scissors, shears, and other articles of cutlery, edge-tools, and hardware requiring a cutting edge, forged and formed with the hammer, of wrought steel, or iron and steel, or cast in a mould, having thereon any word or words which shall or may denote or indicate the quality of such articles to be otherwise than the real and true quality thereof, shall, in all and every the cases aforesaid, forfeit all and every such knives, knife-blades, forks, razors, razor-blades, scissors, shears, and other articles of cutlery, edge-tools, and hardware requiring a cutting edge, being marked, possessed, sold, or exposed to sale contrary to the directions of this act, together with the sum of 5*l.* for any quantity not exceeding one dozen of such articles so marked, sold, or exposed to sale; and for any quantity of such articles exceeding one dozen, 5*l.* for every one dozen thereof; such su[illegible]

No person to mark any knives, &c. forged with the hammer, with any words which shall indicate the quality to be otherwise than the true quality; or have in his possession any such articles improperly marked.

59 G. 3. c. 7.

and sums respectively to be levied, recovered, and applied as hereinafter directed.

Penalty on persons casting, marking, &c. any articles with the words *London*, or *London made* thereon, except made within the city of *London*, or a certain distance thereof.

§ 5. And it shall not be lawful for any person or persons to cast, mark, strike, stamp, grave, or impress, or cause, direct, or procure to be cast, marked, struck, stamped, graved, or impressed, in or upon any part of any knives, knife-blades, forks, razors, razor-blades, scissors, shears, and other articles of cutlery, edge-tools and hardware requiring a cutting edge, forged and formed with the hammer, of wrought steel, or of iron and steel, or cast in a mould either at the time of forging or casting such articles or subsequently thereto, previous to the *bonâ fide* sale thereof to the user, the word or words "*London*," "*London* made," or any word or words having any similitude thereto, unless the articles so cast, marked, struck, stamped, graved, or impressed, shall have been manufactured within the city of *London*, or within twenty miles distance therefrom; nor to have in his, her, or their possession, for the purpose of sale, nor to sell, or expose, or offer to sale, or cause, direct, or procure to be sold, exposed, or offered to sale, any knives, knife-blades, forks, razors, razor-blades, scissors, shears, and other articles of cutlery, edge-tools, and hardware requiring a cutting edge, forged and formed with the hammer, of wrought steel, and iron and steel, or cast in a mould, having marked thereon the word or words "*London*" "*London* made," or any word or words having any similitude thereto, unless the articles so cast, marked, struck, stamped, graved, or impressed, shall have been manufactured within the city of *London*, or within twenty miles' distance therefrom; and all and every person or persons who shall cast, mark, strike, stamp, grave, or impress, or cause or procure to be cast, marked, struck, stamped, graved, or impressed, in or upon any part of any knives, knife-blades, forks, razors, razor-blades, scissors, shears, and other articles of cutlery, edge-tools, and hardware requiring a cutting edge, forged or formed with the hammer, of wrought steel, or iron and steel, or cast in a mould, either at the time of forging or casting, or subsequently thereto, previous to the *bonâ fide* sale thereof to the user, the word or words "*London*," "*London* made," or any word or words having any similitude thereto, unless the articles so cast, marked, struck, stamped, graved, or impressed, shall have been manufactured within the city of *London*, or within twenty miles' distance therefrom; or who shall have in his, her, or their possession, for the purpose of sale, or shall sell, expose, or offer to sale, or cause, direct, or procure to be sold, exposed, or offered to sale, any knives, knife-blades, forks, razors, razor-blades, scissors, shears, and other articles of cutlery, edge-tools, and hardware requiring a cutting edge, forged and formed with the hammer, of wrought steel, or iron and steel, or cast in a mould, having thereon the word or words "*London*," "*London* made," or any word or words having any similitude thereto, unless the articles so cast, marked, struck, stamped, graved, or impressed, shall have been manufactured within the city of *London*, or within twenty miles' distance therefrom, shall, in all and every the cases aforesaid, forfeit all and every such knives, knife-blades, forks, razors, razor-blades, scissors, shears, and other articles of cutlery, edge-tools, and hardware requiring a cutting edge, being marked, possessed, sold, or exposed to sale contrary to the directions of this

act, together with the sum of 10*l.* for any quantity not exceeding one dozen of such articles so marked, sold, or exposed to sale; and for any quantity of such articles exceeding one dozen, 10*l.* for every dozen thereof; such sum and sums respectively to be levied, recovered, and applied as hereinafter directed.

59 G. 3. c. 7.

§ 6. Provided, that in case any person or persons shall have in his, her, or their possession, for the purpose of sale, or shall sell, expose, or offer for sale, or cause, direct, or procure to be sold or offered for sale, any knives, knife-blades, forks, razors, razor-blades, scissors, shears, or any other cutlery articles whatsoever, edge-tools, and hardware requiring a cutting edge, formed with the hammer or cast in a mould, in a finished state, having marked thereon any word or words contrary to the directions of this act, shall, at or upon any information or complaint being laid or made against him, her, or them, prove satisfactorily by the oath of himself, or herself, or any other person, before one or more of H. M.'s justices of the peace, that such knives, knife-blades, forks, razors, razors-blades, scissors, shears, or any other cutlery articles whatsoever, edge-tools and hardware requiring a cutting edge, were purchased or came into the possession of him, her, or them, or were made, formed, cast, or manufactured before the passing of this act, then and in such case the person or persons so having the said articles in a finished state in his, her, or their possession, for the purpose of sale, or selling, exposing, or offering the same for sale, or causing, directing, or procuring the same to be sold or offered for sale, shall not be liable to the pains and penalties aforesaid.

Persons having articles in their possession marked contrary hereto before the passing of this act to be excused from penalties.

§ 7. Provided also, that in case any person or persons shall have in his, her, or their possession, for the purpose of sale, or shall sell, expose, or offer for sale, or cause, direct, or procure to be sold, or offered for sale, any knives, knife-blades, forks, razors, razor-blades, scissors, shears, or any other cutlery articles whatsoever, edge-tools or hardware requiring a cutting edge, cast or formed in a mould, or forged and formed with the hammer, which shall not have been made, formed, cast, or manufactured before the passing of this act, having marked thereon the figure or form of a hammer, or any word or words contrary to the directions of this act, shall, at or before any information or complaint shall be laid or made against him, her, or them, prove satisfactorily by the oath of himself, herself, or themselves, before one or more of H. M.'s justices of the peace, that he, she, or they purchased such articles, with the figure, words, or marks thereon respectively, without knowing at the time of such purchase that the same were articles marked contrary to the directions of this act, and shall discover to any two or more justices of the peace the name or names of the person or persons of whom he or she purchased the same, so that such person or persons shall be prosecuted to conviction for the same, then and in such case the person or persons who shall have in his, her, or their possession any of such articles as aforesaid, for the purposes aforesaid, shall not be liable to the pains and penalties aforesaid, but shall be entitled to two-third parts of the penalty as other informers.

Persons having in their possession articles marked contrary to the directions of this act, who shall, before any information be laid, prove the purchase without knowing that the articles were improperly marked, to be excused from the penalties.

§ 8. And it shall and may be lawful to and for any two or more of H. M.'s justices of the peace for the county, city, or place where the offender or offenders shall reside, or where the offence

Recovery of penalties.

59 G.3. c.7.

shall be committed, to hear and determine any offence or offences against this act; and all such justices are hereby authorised and required, upon any information exhibited or complaint made in that behalf, to summon the party or parties accused, and the witnesses on each side, and to examine into the matter of such complaint; and upon due proof thereof, either by confession of the party complained of, or by the oath of one or more credible witness or witnesses, to give judgment or sentence for the pecuniary penalty, with costs, to be allowed by such justices, and to award and issue out their warrant under their hands and seals for the levying such penalty and costs on the goods and chattels of the offender or offenders, and to cause sale to be made thereof in case such goods and chattels shall not be redeemed within five days inclusive of the day of the seizure, rendering the overplus (if any), after defraying the expences of such distress and sale, to the person or persons whose goods and chattels shall have been so distrained and sold; and for want of a sufficient distress, such justices shall and may commit such offender or offenders to H. M.'s gaol for the county, city, or place where such offence shall be committed as aforesaid, there to remain for any time not exceeding three calendar months, unless payment shall be sooner made of the said penalty and costs.

Appeal.

§ 9. And if any person or persons shall think himself, herself, or themselves aggrieved by the judgment of such justices, he, she, or they may (upon giving security with a sufficient surety to the amount of the value of such penalty or penalties and costs, together with such further costs as shall be awarded in case such judgment shall be affirmed,) appeal to the next general quarter sessions of the peace for the county, city, or place where such conviction shall be made; and the justices at such sessions are hereby empowered to summon and examine witnesses on oath, and to hear and finally determine the matter of the said appeal, and to award such costs as the said court shall think reasonable to the party in whose favour such appeal shall be determined.

Mitigation of penalties.

§ 10. Provided, that it shall be lawful for any justices of the peace, before whom any information may be laid, and also for the said justices in quarter sessions assembled (if they respectively should think fit), to mitigate the said penalties in such manner as to them shall seem expedient; provided that such penalties shall in no case be mitigated to less than one half, or where such penalties shall be less than the sum of 50*l.* to less than 25*l.*

Proceedings not to be quashed for want of form only.

§ 11. And no conviction made upon any offence or offences in this act mentioned or created shall be set aside in or by any court whatsoever, for want of form, or through the mistake of any fact, circumstance, or other matter whatsoever; provided that the material facts alleged in such conviction, and upon which the same shall be grounded, be proved to the satisfaction of the said court; any law, statute, or custom to the contrary notwithstanding.

§ 12. Form of Conviction.

Form of conviction.

BE it remembered, that on the ——— day of ———, in the year of our Lord ———, at ———, in the county of ———, A. B. *came before us* C. D. *and* E. F., ——— *of his majesty's justices of the peace for the said county,* [*city,* or *place,*

as the case may be,] *and informed us, that* G. H. *of* ——, *on the* —— *day of* ——, *now last past, at* ——, *in the said county,* [*city*, or *place*, as the case may be; here set forth the fact for which the information is laid.] *Whereupon the said* G. H., *after being duly summoned to answer the charges, appeared before us on the* —— *day of* ——, *at* ——, *in the said county,* [*city*, or *place*,] *and having heard the charge contained in the said information, declared he was not guilty of the said offence;* [or, as the case may happen to be, *did not appear before us, pursuant to the said summons*, or, *did neglect and refuse to make any defence against the said charge;*] *but the same being fully proved before us, upon the oath of* J. K., *a credible witness*, [or, as the case may happen to be,] *acknowledged and voluntarily confessed the same to be true; and it manifestly appeared to us, that the said* G. H. *is guilty of the offence charged upon him in the said information; We do therefore hereby convict him of the offence aforesaid, and do declare and adjudge that he the said* G. H. *hath forfeited the said* [here describe the articles formed, cast, sold, or offered to sale, not being marked according to the directions of this act,] *together with the sum of* —— *of lawful money of* Great Britain, *for the offence aforesaid, to be distributed as the law directs, according to the form of the statute in that case made and provided. Given under our hands and seals, the* —— *day of* ——.

59 G. 3. c. 7.

§ 13. If any person shall be summoned as a witness to give evidence before such justices of the peace, touching any of the matters relative to this act, either on the part of the informer or of the person or persons accused, and shall neglect or refuse to appear at the time and place to be for that purpose appointed, without a reasonable excuse for such his, her, or their neglect or refusal, to be allowed of by such justice of the peace, or appearing shall refuse to be examined on oath and give evidence before such justices, then every such person shall forfeit for every such offence the sum of 10*l.*, to be levied and paid in such manner and by such means as are herein directed as to other penalties.

Compelling the attendance of witnesses.

§ 14. It shall and and may be lawful to and for any justice of the peace of the county, city, or place where the offence is committed, or where the offender or offenders reside, by warrant under his hand and seal, to cause any such knives, knife-blades, forks, razors, razor-blades, scissors, shears, or any other cutlery articles whatsoever, edge-tools or hardware requiring a cutting edge, as shall be liable to be forfeited by virtue of this act, to be seized, and the same when seized to keep in safe custody, for the purpose of producing the same in evidence upon any prosecution to be instituted or carried on for the pecuniary penalties incurred in respect thereof; and when and as soon as the further production thereof in evidence shall become unnecessary, then the same shall, by order of such justices, be destroyed or disposed of in any manner as the court before which such articles shall be produced may direct.

Penalties may be recovered by action.

Justices may seize and detain knives, &c. as evidence.

§ 15. No information shall be exhibited for any of the offences aforesaid, unless within the space of six calendar months after the commission of such offences respectively.

Limitation of time for informations under the act.

§ 16. One-third part of the pecuniary penalties to be recovered as aforesaid shall be paid and payable to the poor of the parish,

Application of the penalties.

29 G.3. c.7.

township, or place where the offence shall be committed, and the other two-third parts of such penalties to the person or persons who shall inform of any the offences aforesaid.

To enable parishioners to be witnesses.

§ 17. In all informations, complaints, and other proceedings, in pursuance of this act, or in relation to any matter or thing herein contained, any inhabitant of the parish, township, or place in which any offence or offences shall be committed, contrary to the true intent and meaning of this act, shall be admitted to give evidence, and shall be deemed competent witnesses, notwithstanding his, her, or their being an inhabitant or inhabitants of the parish, township, or place wherein any such offence or offences shall be supposed to have been committed.

Persons disclosing by whose order any thing punishable under this act was done shall not be liable to any penalty for doing it.

§ 18. In case any person or persons who shall be liable to any of the penalties aforesaid, by reason of any thing done by him, her, or them, under the order, direction, or procurement of any other person or persons, shall, before any information or complaint shall be laid or made against him, her, or them, discover to any two or more justices the name or names of the person or persons by whose order, direction, or procurement he, she, or they shall have done such act, which shall have made him, her, or them liable to any of the penalties, so that the person or persons by whose order, direction, or procurement he, she, or they shall have done such act, shall be prosecuted to conviction for the same; then and in such case such person or persons who shall give such information, or make such complaint, shall not be liable to the pains and penalties aforesaid, but shall be entitled to two-third parts of the penalty, as other informers.

57 G.3. c.115. Provisions of 12 G.1. c.34. extended to labourers employed in the manufacture of articles made of steel, &c.

By stat. 57 *G.* 3. *c.* 115. § 1. The provisions of stat. 12 *G.* 1. *c.* 34., which prohibits the payment of the wages of persons employed in the woollen manufacture in goods, and to secure the payment of every part of their wages in good and lawful money of this kingdom, are extended to labourers employed in the manufacture of articles made of steel, or of steel and iron combined, and of plated articles, or of other articles of cutlery.

58 G.3. c.51. Wages may be paid in bank notes, if the party consents.

But by stat. 58 *G.* 3. *c.* 51. § 1. It shall be lawful for any person concerned in the employment of artificers, &c. to pay their wages in bank of *England* or notes of any licensed banker where such artificer, &c. shall freely and voluntarily consent, and be willing to accept and receive the same in payment of their wages, but not otherwise.

57 G.3. c.115. Provisions in 22 G.2. c.27. applicable to this act.

By stat. 57 *G.*3. *c.* 115. § 2. All the provisions of stat. 22 *G.* 2. *c.* 27. to facilitate labourers in the woollen trade recovering their wages, as well as the provisions imposing a penalty on masters paying labourers in goods, are extended to persons employed in the manufacture of articles made of steel, or of steel and iron combined, and of plated articles, or of other articles of cutlery, in as full and ample a manner as if they had been enumerated in the aforesaid act; and all remedies, penalties, modes of recovery, powers, and privileges, and all other matters and things therein for these purposes contained, are hereby extended to parties concerned in such manufactures, or connected therewith.

Cyder. See Excise, and Alehouses.

Debtors.

[5 G. 4. c. 61.]

HOW prisoners for debt shall be demeaned. See title Gaol, also *tit.* Insolvent Debtors.

5 G. 4. c. 61.

By stat. 5 *G.* 4. *c.* 61. § 2. Insolvent debtors brought to the assize town, in order to be discharged by the commissioner of the insolvent court on his circuit shall pay for their being carried thither, not exceeding 12*d.* a mile; and if they are not able to pay, then the same shall be paid by the treasurer out of the county stock.

Deceit. See *ante*, tit. Cheat.

Deer. See Game, Vol. II.

Defamation. See Slander, Vol. V.

Demurrer.

A *DEMURRER* (from *demorari*) signifies an abiding in point of law, upon which the defendant joins issue, allowing the fact to be true as laid in the indictment. *Wood's Inst. b.* 4. *c.* 5.

In criminal cases, not capital, if the defendant demur to an indictment, &c. whether in abatement or otherwise, the court will not give judgment against him to answer over, but final judgment. 2 *Haw. c.* 31. § 7. *Et per Lawrence* J., *R.* v. *Gibson*, 8 *East*, 112.

Demurrers, however, to indictments are seldom used; since the same advantages may be taken from a plea of not guilty; or afterwards in arrest of judgment, when the verdict has established the fact. 4 *Blac. Com.* 334.

Deodand.

What it is.

DEODAND is, when any movable thing inanimate, or beast animate, doth move to or cause the untimely death of any reasonable creature, by mischance, without the will or fault of himself, or of any person. 3 *Inst.* 57.

Deodands are forfeitures which the ignorance and superstition of ancient times introduced and called by the name of deodands from the application of them to pious uses; these were part of the casual revenue of the crown; and the value, when found by the inquest, was put in charge to the sheriff, in order to be levied on the vill where the accident happened; and paid into the hands of

the king's almoner to be applied to pious uses for the soul of the deceased. *Fost.* 265. 1 *Hale*, 120.

This forfeiture, though not now applied to pious uses, is still part of the casual revenue of the crown, unless where lords of franchises are entitled to it by *grant;* for no man can *prescribe* to it, or to the goods of self-murderers or other felons, or of outlaws, happening within his royalty. *Fost.* 265. 1 *Inst.* 114.

Horse killing an infant.

It seems clearly settled, contrary to the former opinions, that a horse, or the like, killing an *infant* within the age of discretion, is as much forfeited as if he were of age. 1 *Haw. c.* 26. § 4.

Things fixed to the freehold.

Also, it was anciently holden, that things *fixed to a freehold*, as the wheel of a mill, or a bell hanging in the steeple, may be deodands; but by the later resolutions they cannot, unless they were severed before the accident happened. 1 *Haw. c.* 26. § 5.

Falling from the shafts of a waggon.

If a man riding on the shafts of a waggon fall to the ground and break his neck, the horses and waggon only are forfeited, and not the loading, because it no way contributed to his death; for which reason, where a thing not in motion causes a man's death, that part thereof only which is the immediate cause is forfeited. And it is a general rule that *wherever the thing which is the occasion of a man's death is in motion at the time, not only that part thereof which immediately wounds him, but all things which move together with it, and help to make the wound more dangerous, are forfeited also. Id.* § 6.

Year and day.

If the party wounded die not of his wound within a year and a day after he received it, there shall be nothing forfeited; for the law doth not look on such a wound as the cause of a man's death, after which he lives so long. 1 *Haw. c.* 26. § 7.

Must be first found by the coroner's inquest.

However, nothing can be forfeited as a deodand, nor seized as such, till it be found by the coroner's inquest to have caused a man's death. *Id.* § 8.

And if the coroner omits his duty in this case, the inquisition may be made by the commissioners of gaol delivery, oyer and terminer, or of the peace. 1 *Hale*, 419.

But these forfeitures, being founded rather in the superstition of an age of ignorance than in the principles of sound reason and policy, have not of late years met with great countenance in *Westminster-hall;* and when juries have taken upon them to use a judgment of discretion, not strictly within their province, for reducing the *quantum* of the forfeiture, the court of K. B. have refused to interpose in favour of the crown or lord of the franchise. 2 *Bac. Abr.* 294. *Fost.* 266.

Dice. See **Cards and Dice**, *ante*, p. 538, and **Stamps**.

Dissenters.

§ I. *Of Protestant Dissenters in general.*

[1 El. c. 2.—23 El. c. 1.—29 El. c. 6.—35 El. c. 1. —3 J. 1. c. 4.—3 J. 1. c. 5.—1 W. & M c. 18, 52 G. 3. c. 155.—53 G. 3. c. 160.]

II. *Dissenting Ministers.*
[1 W. & M. c. 18.—10. Ann. c. 2.—19 G. 3. c. 44.—42 G. 3. c. 90.—43 G. 3. c. 10.—43 G. 3. c. 96.—52 G. 3. c. 155.]

III. *Dissenting Schoolmasters.*
[23 El. c. 1.—13 & 14 C. 2. c. 4.—19 G. 3. c. 44.]

I. Of Protestant Dissenters in general.

BY stat. 1 *El. c.* 2. § 14. Every person not having reasonable excuse shall resort to his parish church or chapel, or upon reasonable let thereof, to some usual place where common prayer shall be used, on every *Sunday* and holiday; on pain of punishment by the censures of the church, or of forfeiting for every offence 12*d.*

1 Eliz. c. 2. To resort to church, &c.

By stat. 23 *El. c.* 1. § 5. Every person above the age of sixteen, who shall not repair to some church or chapel, or usual place of common prayer, shall forfeit for every month 20*l.* And if he shall forbear for twelve months, he shall be bound to the good behaviour till he conform.

23 Eliz. c. 1.

By stat. 29 *El. c.* 6. Every offender in not repairing to church, having been once convicted, shall, without any other indictment or conviction, pay half-yearly into the exchequer 20*l.* for every month afterwards, until he conform; which, if he shall omit to do, the king may seize all his goods, and two parts of his lands.

29 Eliz. c. 6.

And by stat. 3 *J.* 1. *c.* 4. § 11. The king may refuse the 20*l.* a month, and take two parts of the land, at his option.

3 J. 1. c. 4.

By stat. 3 *J.* 1. *c.* 5. No recusant in not repairing to church, being convicted thereof, shall enjoy any public office, or shall practise law or physic, or be executor, administrator, or guardian.

3 J. 1. c. 5.

And by stat. 35 *El. c.* 1. If any person refusing to repair to church shall be present at any assembly, meeting, or conventicle, under pretence of any exercise of religion, he shall be imprisoned till he conform; and if he shall not conform in three months, he shall abjure the realm; which if he shall refuse to do, or after abjuration shall not go, or shall return without licence, he shall be guilty of felony without benefit of clergy. And whether he shall abjure or not, he shall forfeit his goods, and shall forfeit his lands during life.

35 Eliz. c. 1.

But by stat. 1 *W. c.* 18. § 1. Commonly called *The Act of Toleration,* which by stat. 19 *G.* 3. *c.* 44. is declared to be a public act, it is enacted, that neither the statutes aforesaid nor any other made against papists and popish recusants, (except stat. 25 *C.* 2. *c.* 2. concerning the qualifying for offices, and 30 *C.* 2. *st.* 2. *c.* 1. containing the declaration against popery,) shall extend to any person dissenting from the church of *England,* who shall, at the general sessions of the peace to be held for the county or place where such person shall live, take the oaths of allegiance and supremacy, and make and subscribe the said declaration against popery; of which the court shall keep a register: and no officer shall take any fee above 6*d.* for registering the same, nor that more than once, and 6*d.* for a certificate thereof signed by such officer.

1 W. c. 18. Privileges give by the act of toleration.

1 W. c. 18.
Places of meeting to be certified.

§ 19. Provided that no congregation or assembly for religious worship shall be permitted until the place of meeting be certified to the bishop of the diocese, or to the archdeacon of the archdeaconry, or to the justices of the peace at the general or quarter sessions of the county, city, or place. And the register or clerk of the peace shall register or record the same, and give certificate thereof to any who shall demand the same; for which no greater fee shall be taken than 6*d.* And (§ 5.) provided, that during the time of meeting the doors shall not be locked, barred, or bolted.

52 G.3. c.155.
All places of religious worship to be certified and registered.

By stat. *52 G. 3. c.* 155. § 1. The several statutes of 13 & 14 *C.* 2. *c.* 1., 17 *C.* 2. *c.* 2., and 22 *C.* 2. *c.* 1. are repealed; and by § 2. it is enacted, that no congregation or assembly for religious worship of protestants (at which there shall be present more than twenty persons besides the immediate family and servants of the person in whose house or upon whose premises such meeting, congregation, or assembly shall be had,) shall be permitted or allowed, unless and until the place of such meeting, if the same shall not have been duly certified and registered under any former act or acts of parliament relating to registering places of religious worship, shall have been or shall be certified to the bishop of the diocese, or to the archdeacon of the archdeaconry, or to the justices of the peace at the general or quarter sessions of the peace for the county, riding, division, city, town, or place in which such meeting shall be held; and all places of meeting which shall be so certified to the bishop's or archdeacon's court shall be returned by such court once in each year to the quarter sessions of the county, riding, division, city, town, or place, and all places of meeting which shall be so certified to the quarter sessions of the peace shall be also returned once in each year to the bishop or archdeacon; and all such places shall be registered in the said bishop's or archdeacon's court respectively, and recorded at the said general or quarter sessions; the registrar or clerk of the peace whereof respectively is hereby required to register and record the same; and the bishop, or registrar, or clerk of the peace to whom any such place of meeting shall be certified under this act shall give a certificate thereof to such person or persons as shall request or demand the same, for which there shall be no greater fee nor reward taken than 2*s.* 6*d.*; and every person who shall knowingly permit or suffer any such congregation or assembly as aforesaid to meet in any place occupied by him, until the same shall have been so certified as aforesaid, shall forfeit for every time any such congregation or assembly shall meet contrary to the provisions of this act, a sum not exceeding 20*l.* nor less than 20*s.*, at the discretion of the justices who shall convict for such offence.

Penalty for permitting meetings in places not duly certified.

Door not to be barred, &c.

And by § 11. No meeting, assembly, or congregation of persons for religious worship shall be had in any place with the door bolted or barred, or otherwise fastened, so as to prevent any person entering therein during the time of any such meeting, &c.; and the person teaching or preaching at any such meeting, assembly, or congregation, shall forfeit for every time any such meeting, &c. shall be held with the doors locked, &c. as aforesaid, not exceeding 20*l.* nor less than 40*s.*, at the discretion of the justices convicting for such offence.

R. v. *Hall,* 1 *T. R.* 320. This was a conviction on stat. 22 *C.* 2. *c.* 1. (*a*), as follows:

R. v. Hall.

" *Parts of* KESTEVEN, *in the county of* LINCOLN. } *BE it remembered, that on the* 2d *day of* March, *in the twenty-sixth year, &c. at* New Sleaford, *in the parts of* K. *aforesaid, &c.* Robert Benson, *clerk, came before me* Richard Brown, *esquire, one of the justices, &c. and gave me the said justice to understand and be informed that one* Samuel Hall, *carpenter, being the occupier of a certain dwelling-house, situate in the parish of* Heckington, *in the parts and county aforesaid, did on the* 26th *of* February *now last past, at the parish of* Heckington *aforesaid, wittingly and willingly suffer a meeting and unlawful assembly of divers persons to be held in his said dwelling-house, for the exercise of religious worship, in other manner than according to the liturgy and practice of the church of* England, *between the hours of one and eight o'clock in the afternoon of the same day; at which meeting and unlawful assembly five persons and more were assembled together over and above those of the said* S. Hall's *household;* (*the dwelling-house in which the said meeting and unlawful assembly was held not being certified to the bishop of the diocese, or to the archdeacon of that archdeaconry, or to the justices of the peace at their general or quarter sessions of the peace for the parts and county in which the said meeting was held, nor registered in the said bishop's or archdeacon's court, nor recorded at the said general or quarter sessions;*) *against the form of the* statutes *in such case made and provided, whereby the said* S. Hall *hath forfeited the sum of* 20*l. to be distributed, &c.— And now, on the* 6*th day of the said month of* March, *in the twenty-sixth year, &c. at, &c. came the said* S. Hall *before me the said justice, in pursuance of my summons, &c. when the said information,* together with the examinations in writing of Joseph Wilkinson *and* Joseph Chamberlain, *both of* H. *aforesaid, two* credible witnesses, *taken upon their respective corporal oaths before me the said justice, being openly read,* which said examinations *set forth, that on the said* 26*th day of* February, *the said* J. Wilkinson *and* J. Chamberlain *went to the dwelling-house of the said* S. Hall, *at* H. *aforesaid, and found a great number of people assembled at the dwelling-house of the said* S. Hall, *and that one* Joseph Merryweathers *was preaching to the said assembly; that the said dwelling-house at which the said meeting and assembly was holden, was not certified or registered as by law required, and that they also saw there* Peter Jarvis, John Taylor, William Taylor, *and* Robert Bowles, *all of the said parish of* H. *attending the said meeting. And the said* S. Hall *being now here* required *by me to* answer the premises, he the said S. Hall pleadeth and confesseth the offence charged upon him *in and by the said information. Wherefore, &c. he hath forfeited* 20*l.*" —— Several objections were taken to this conviction: 1st, The information is not in the *present* tense. It is stated that the informer *came* before the justice and *gave* him to understand, &c. 2dly, That the evidence was not given in the presence of the defendant, which it ought to have been; the defendant should have

(*a*) Repealed by stat. 52 *G.*3. c. 155., § 1., under which the Form of Conviction in this case may be useful.

R. v. Hall.

been called on to plead before the evidence was received; but the justice read over improper evidence, which should not have been given, and then called on the defendant to answer the premises, by which means he was confounded and induced to plead guilty. 3dly, Though this is charged as an offence against *statute 22 C. 2. only*, yet it concludes contrary to the *statutes*, which is fatal. 4thly, The information does not contain a charge within the stat. 22 *C.* 2. *c.* 1., upon which the justice professes to convict; and though it profess to set out an offence against that statute, yet it is not confined to that statute only, but negatives several exceptions in 1 *W. c.* 18. Therefore, though it was not necessary to negative any of the exceptions under the latter act, yet having undertaken so to do, the omission of any one is fatal, and, it is not stated, *that he did not take the oaths, &c.* which is required by the third section of that statute. —— The court said, that however inclined they were to listen to trivial objections to such prosecutions, yet none of the present were sufficient in point of law. — As to the first, the words objected to were better in the *past* than *present* tense, because they referred to a time past, (*viz.*) the time of making the information. The 2d is cured by the defendant *pleading guilty*. As to the 3d and 4th, this is a conviction on 22 *C.* 2.; therefore the exceptions in 1 *W. c.* 18. need not have been negatived, and may be rejected as surplusage; for if a subsequent statute make any exception to a former one, it is incumbent on the defendant to show by way of defence that he comes within such exception. And, besides, the 13th sect. of 22 *C.* 2. directs that that act shall be construed most largely and beneficially for the suppressing of conventicles, &c. and that no proceedings thereupon shall be impeached for want of form. Conv. affirmed.

1 W & M. c. 18. Disturbing the congregation.

By stat. 1 *W.* & *M. c.* 18. § 18. Any person who shall willingly, and of purpose maliciously or contemptuously, come into any cathedral, or parish church, chapel, or other congregation permitted by this act, and disquiet or disturb the same, or misuse any preacher or teacher, shall, on proof thereof before any justice by two witnesses, find two sureties in 50*l.*; and in default of such sureties shall be committed to prison till the next sessions; and upon conviction at such sessions, shall forfeit 20*l.* to the king.

Certiorari not taken away by stat. 1 W. & M. c. 18. Vide ante, title Conviction.

R. v. *Hube and others*, 5 *T. R.* 542. The defendants were indicted on stat. 1 *W.* & *M. c.* 18., and the indictment was by *certiorari* removed by the prosecutor into the K. B. before verdict. And it was moved, that as the penalty of 20*l.* was to be paid "*upon conviction of the said offence at the said general or quarter sessions*," the statute intended to confine the cognisance of the offence to the sessions, and that the power to remove by *certiorari* was therefore taken away by necessary implications. But the court held that the *certiorari* was not taken away by this statute, and that the indictment was therefore well removed.

52 G. 3. c. 155. Penalty on disturbing religious assemblies.

By stat. 52 *G.* 3. *c.* 155. § 12. It is enacted, "that if any person or persons, at any time after the passing of this act, do and shall wilfully and maliciously or contemptuously disquiet or disturb any meeting, assembly, or congregation of persons assembled for religious worship, permitted or authorized by this act, or any former act or acts of parliament, or shall in any way disturb,

molest, or misuse any preacher, teacher, or person officiating at such meeting, assembly, or congregation, or any person or persons there assembled, such person or persons so offending, upon proof thereof before any justice of the peace by two or more credible witnesses, shall find two sureties to be bound by recognizances in the penal sum of 50*l.* to answer for such offence, and in default of such sureties shall be committed to prison, there to remain till the next general or quarter sessions; and upon conviction of the said offence, at the said general or quarter sessions, shall suffer the pain and penalty of 40*l.*"

Certiorari not taken away by stat. 52 G.3. c.155.

An indictment found at the quarter sessions upon stat. 52 *G.* 3. *c.* 155. § 12. for disturbing a religious assembly, may be removed into the court of K. B. by *certiorari* before trial. *R.* v. *Wadley*, 4 *M.* & *S.* 508.

1 W. & M. c. 18. Dissenter being appointed to offices, may appoint a deputy.

By stat. 1 *W.* & *M.* *c.* 18. § 7. If any person dissenting from the church of *England* as aforesaid shall be appointed to the office of high constable, petty constable, churchwarden, overseer of the poor, or any other parochial or ward office, and shall scruple to take upon him the office, in regard of the oaths or otherwise, he may execute the same by a sufficient deputy, that shall comply with the laws on this behalf: provided that the deputy be allowed and approved by such person, and in such manner, as such officer should by law have been allowed and approved.

§ 19. But no congregation shall be permitted by this act until the place of the meeting shall be certified to the bishop or the archdeacon, or the justices at the sessions for the place in which, &c., and registered in the bishop's or archdeacon's court, or recorded at the session.

53 G. 3. c. 160. ante, p. 379. Act of W. & M. respecting the denial of the Trinity, repealed.

By stat. 53 *G.* 3. *c.* 160. So much of an act passed in the first year of the reign of king *William* and queen *Mary*, intituled "*An act for exempting his majesty's protestant subjects dissenting from the church of* England, *from the penalties of certain laws,*" as provides that that act as to any thing therein contained should not extend or be construed to extend to give any ease, benefit, or advantage to persons denying the *Trinity* as therein mentioned, is repealed.

Provisions of 9 & 10 W. 3. in part repealed.

And by § 2. The provisions of another act passed in the ninth and tenth years of the reign of king *William*, intituled "*An act for the more effectual suppressing blasphemy and profaneness,*" so far as the same relate to persons denying as therein mentioned, respecting the *Holy Trinity*, is repealed.

An exemption from tolls, to persons "going or returning from their *proper parochial* church, chapel, or other place of religious worship on *Sundays*," contained in a local act, 37 *G.* 3., was construed to mean places of assembly, of which the parties resorting to them are *quodam modo* members; and with reference to the word *parochial*, it is to be applied not to the word *church* only, but to all the other descriptions of places; a dissenter, therefore, going to and returning from the meeting-house, situate out of the parish as his proper place of religious worship, was held not to be within the exemption. *Lewis* v. *Hammond*, 2 *B.* & *A.* 206. See stat. 3 *G.* 4. *c.* 126. § 32. Vol. II. p. 975. and n. (*b*).

II. Dissenting Ministers.

By stat. 52 *G.* 3. *c.* 155. § 1. The three statutes, *viz.* 17 *C.* 2. *c.* 2., 22 *C.* 2. *c.* 1., and 13 & 14 *C.* 2. *c.* 1. are repealed.

19 G. 3. c. 44. Protestant dissenting ministers, who shall take the oaths, &c. required by the Toleration Act, &c. shall be entitled to all the benefit of that statute and 10 Ann. c. 2.

By stat. 19 *G.* 3. *c.* 44. § 1. Every person dissenting from the church of *England*, in holy orders, or pretended holy orders, or pretending to holy orders, being a preacher or teacher of any congregation of dissenting protestants, who shall take the oaths and make and subscribe the declaration against popery required by the 1 *W.* & *M.* *c.* 18. to be taken, made, and subscribed by protestant dissenting ministers, and shall also make and subscribe the declaration in the words following; *viz. I* A. B. *do solemnly declare, in the presence of Almighty God, that I am a christian and a protestant, and as such that I believe that the Scriptures of the Old and New Testament, as commonly received among protestant churches, do contain the revealed will of God; and that I do receive the same as the rule of my doctrine and practice;* shall be entitled to all the benefits of the said act of 1 *W.* & *M.* *c.* 18. and 10 *Ann.* *c.* 2. And the justices at the sessions where any protestant dissenting minister shall live, are required to tender and administer the said last-mentioned declaration to such minister, upon his offering himself to make and subscribe the same, and thereof to keep a register; for the registering of which he shall pay 6*d.* to the officer of the court, and no more; and 6*d.* for a certificate thereof signed by such officer.

10 Ann. c. 2. Being qualified may officiate in any county.

By stat. 10 *Ann.* *c.* 2. § 9. Any preacher or teacher of any congregation of dissenting protestants, duly qualified according to the act of *W.* & *M.* shall be allowed to officiate in any congregation, although the same be not in the county where he was so qualified; provided that the place of meeting hath been duly certified and registered; and such teacher or preacher shall, if required, produce a certificate of his having so qualified himself, under the hand of the clerk of the peace where he was qualified; and shall also, before any justice of such county or place where he shall so officiate, make and subscribe such declaration, and take such oaths as aforesaid, if required.

Exempted from offices.

And by stats. 1 *W.* & *M.* *c.* 18. § 11. and 19 *G.* 3. *c.* 44. § 1. Every such teacher and preacher, that is a minister, preacher, or teacher of a congregation, having taken the oaths and subscribed as aforesaid, shall from thenceforth be exempted from serving on any jury, or from being chosen or appointed to bear the office of churchwarden, overseer of the poor, or any other parochial or ward office, or other office, in any hundred of any shire, city, town, parish, division, or wapentake, and by stats. 42 *G.* 3. *c.* 90. and 43 *G.* 3. *c.* 10. from serving in the militia, either personally or by substitute, if he be a licensed teacher of any separate congregation, and has been licensed twelve months previous to the yearly general meeting appointed to be held in *October*, &c.; and by 43 *G.* 3. *c.* 96. § 12. from serving under the army of reserve act, " if he be a licensed teacher of any separate congregation in holy orders, or pretended holy orders, and not carrying on any other trade, or exercising any other occupation for his livelihood, except that of a schoolmaster."

Any other parochial office.] Stat. 1 *W.* & *M.* c. 18. § 11. extends to all parish offices, whether they existed at that time, or were created since that act. And therefore, in the case of *Kenward* v. *Knowles*, C. P. *Will.* 463., it was decided that a baptist preacher, qualified according to that act, was exempted from serving the office of one of the collectors of the rates for rebuilding *St. Olave's* church in *Southwark*, under stat. 10 *G.* 3. *c.* 18. And it was also ruled that the party was equally entitled to his exemption, though he was engaged in trade.

R. v. Just. of Denbighshire.

R. v. *The Justices of Denbighshire*, 14 *East*, 285. A motion was made upon stat. 1 *W.* & *M. c.* 18. § 8. (the toleration act) for a *mandamus* to the justices of *Denbigh* at their next sessions, to admit *David Lewis* to take the oaths and make and subscribe the declaration required under that statute. The motion was made upon an affidavit of *David Lewis*, in which he described himself as " a protestant dissenter," who " preaches to several congregations of protestant dissenters ;" stating the circumstances of his application to the justices at their last sessions, and of his tendering himself to take the oaths and make and subscribe the declaration mentioned in the statute ; that the chairman of the court required of him a *certificate* of his having *a separate congregation*, and that upon his saying *he had no separate congregation*, the sessions refused to administer the oath to him, &c. After the words of the toleration act had been stated, Ld. *Ellenborough* C. J. enquired whether the person applying now swore to the fact of his being the teacher or preacher of any separate congregation of protestant dissenters ? And being answered in the negative, *Bayley* J. asked, if he were not the teacher or preacher of any certain congregation, under what description in the 8th clause he brought himself ? To which it was answered, as a teacher or preacher of several congregations of protestant dissenters, though not attached to any particular separate congregation of his own. — Ld. *Ellenborough* C. J. The chairman of the sessions might have been wrong in asking this person for a certificate of his having a separate congregation ; but still, to entitle himself to succeed in his application, he ought to show himself to be the acknowledged teacher or preacher of some particular congregation, or to bring himself within some other qualifying description in the act, in order to be entitled to the exemption which he seeks. — *Grose* J. agreed. — *Le Blanc* J. If the party be in holy orders, or pretend to holy orders, though he have no particular congregation of his own, he would come within the 8th section ; but if he applied merely as a teacher or preacher, not pretending to holy orders, he must state himself to be the teacher or preacher of some particular congregation of protestant dissenters by whom he is recognised in that character. — *Bayley* J. This clause of the toleration act meant to relieve persons who had protestant dissenting congregations severally attached to them at the time they made the application to the sessions, from the penalties imposed by former acts, for officiating as preachers of such congregations. Rule refused.

Et vide ante, p. 860.

In consequence of the above decision (*a*), the following act was passed.

(*a*) See also the cases of *R.* v. *The Just. of Gloucestershire*, 15 *East*, 577., and *R.* v. *The Just. of Suffolk*, 15 *East*, 590.

52 G.3. c.155.
Penalty on persons preaching without consent of occupiers.

By stat. 52 *G.* 3. *c.* 155. § 3. Every person who shall teach or preach in any congregation or assembly as in this act aforesaid (see *ante*, p. 860.) in any place, without the consent of the occupier thereof, shall forfeit for every such offence any sum not exceeding 30*l.* nor less than 40*s.*, at the discretion of the justices who shall convict for such offence.

Exemptions in favour of preachers and persons resorting to religious assemblies duly certified, &c.

And by § 4. Every person who shall teach or preach at, or officiate in, or shall resort to any congregation or assembly for religious worship of protestants, whose place of meeting shall be duly certified according to the provisions of this act, or any other act or acts relating to the certifying and registering of places of religious worship, shall be exempt from all such pains and penalties under any act or acts relating to religious worship, as any person who shall have taken the oaths and made the declaration prescribed by or mentioned in stat. 1 *W. & M.* or any act amending the said act (*a*), is by law exempt.

One justice to have power in certain cases to require the oath and declaration to be made and subscribed.
19 G.3. c.44.

§ 5. Provided, that every person not having taken the oaths and subscribed the declaration hereinafter specified, who shall preach or teach at any place of religious worship certified in pursuance of the directions of this act, shall, when thereto required by any one justice, by any writing under his hand or signed by him, take, and make, and subscribe, in the presence of such justice, the oaths and declarations specified and contained in stat. 19 *G.* 3. *c.* 44. (*b*); and no such person who, upon being so required to take such oaths and make such declaration as aforesaid, shall refuse to attend the justice requiring the same, or to take, and make, and subscribe such oaths and declaration as aforesaid, shall be thereafter permitted or allowed to teach or preach in any such congregation or assembly for religious worship, until he shall have taken such oaths and made such declaration as aforesaid, on pain of forfeiting, for every time he shall so teach or preach, any sum not exceeding 10*l.* nor less than 10*s.*, at the discretion of the justice convicting for such offence.

Persons so required not to go more than five miles from home.

And by § 6. No person shall be required by any justice to go to any greater distance than five miles from his own home, or from the place where he shall be residing at the time of such requisition, for the purpose of taking such oaths as aforesaid.

Any protestant person may require the justice to administer the oath and

§ 7. Any of H. M.'s protestant subjects may appear before any one justice, and produce to such justice a printed or written copy of the said oaths and declaration, and require such justice to administer such oaths, and to tender such declaration to be made, taken, and subscribed by such person; and thereupon such

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(*a*) *Viz.* The oaths of allegiance and supremacy, see tit. Oaths, and declaration against popery. See next note.

(*b*) *Viz.* The declaration against popery required by 1 *W. & M. st.* 1. c. 18. § 13. [see the form in 30 *C.* 2. *st.* 2. *c.* 1. § 32. *tit.* Oaths, § VI.] and the declaration of Christian belief provided by stat. 19 *G.* 3. *c.* 44. itself in § 1. [See the Form, *ante*, p. 860.] Note, the *oaths specified and contained in stat.* 19 *G.* 3. *c.* 44. are the oaths required by 1 *W. & M. st.* 1. c. 18. § 13. *viz.* those of *allegiance* and *supremacy:* the stat. 19 *G.* 3. *c.* 44., however, enacts by § 13. that the declaration against popery and *a declaration of fidelity* and *profession of Christian belief* therein provided, shall be subscribed by dissenters who scruple to take any *oath.* Another *declaration of fidelity* has been provided for *Quakers* by stat. 8 *G.* 1. *c.* 6. § 1. Vol. III. tit. Oaths, § VII. p. 592.; and by stat. 31 G.3. *c.* 32. § 18. tit. Popery, § II., no person shall be summoned, or prosecuted for not obeying any summons to take the oath of *supremacy.*

justice shall administer such oaths, and tender such declaration to the person requiring to take, and make, and subscribe the same; and such person shall take, and make, and subscribe such oaths and declaration in the presence of such justice accordingly; and such justice shall attest the same to be sworn before him; and shall transmit or deliver the same to the clerk of the peace for the county, &c. for which he shall act as such justice, before or at the next general or quarter sessions of the peace for such county, &c.

52 G.3. c.155.

tender the declaration.

And by § 8. Every justice before whom any person shall make, and take, and subscribe such oaths and declaration as aforesaid, shall forthwith give to the person having taken, made, and subscribed such oaths and declaration, a certificate thereof under the hand of such justice, in the form following; (that is to say,)

Certificate to be given by the justice.

I A. B., *one of his majesty's justices of the peace for the county,* [*riding, division, city,* or *town,* or *place,* as the case may be,] *of* ———, *do hereby certify, that* C. D. *of,* &c. [describing the christian and surname and place of abode of the party,] *did this day appear before me, and did make and take and subscribe the several oaths and declaration specified in an act made in the fifty-second year of the reign of king* George *the third, intituled,* [set forth the title of this act. (*a*)] *Witness my hand, this* ——— *day of* ———, *one thousand eight hundred and* ———.

And for the making and signing of which certificate, where the said oaths and declaration are taken and made on the requisition of the party taking and making the same, such justice shall be entitled to demand and have a fee of 2*s.* 6*d.* and no more; and such certificate shall be conclusive evidence that the party named therein has made and taken the oaths and subscribed the declaration in manner required by this act.

And by § 9. It is further enacted, that every person who shall teach or preach in any such congregation or assembly as aforesaid, who shall employ himself solely in the duties of a teacher or preacher, and not follow or engage in any trade or business, or other profession, occupation, or employment for his livelihood, except that of a schoolmaster, and who shall produce a certificate of some justice of his having taken, and made, and subscribed the oaths and declaration aforesaid, shall be exempt from the civil services and offices specified in the said 1 *W.* & *M.*, and from being ballotted to serve and from serving in the militia or local militia of any county, &c. in any part of the U. K.

Exemption from civil and military offices and duties.

§ 10. Every person who shall produce any false or untrue certificate or paper, as and for a true certificate of his having made and taken the oaths and subscribed the declarations (*b*), by this act required for the purpose of claiming any exemption from civil or military duties as aforesaid, under the provisions of this or any other act or acts, shall forfeit for every such offence the sum of 50*l.*; which penalty may be recovered by and to the use of any person who will sue for the same by action of debt, bill, plaint, or information.

Penalty on producing a false certificate.

(*b*) See p. 862. note (*b*).

(*a*) "*An act to repeal certain acts, and amend other acts relating to religious worship and assemblies, and persons teaching or preaching therein*"

52 G. 3. c. 155. This act not to affect the church.

And by § 13. Nothing in this act contained shall be construed to affect the celebration of divine service according to the rites and ceremonies of the united church of *England* and *Ireland*, by ministers of the said church, in any place hitherto used for such purpose, or being now or hereafter duly consecrated or licensed by any archbishop or bishop, or other person lawfully authorised to consecrate or license the same; or to affect the jurisdiction of the archbishops or bishops, or other persons exercising lawful authority in the church of the U. K. over the said church, according to the rules and discipline of the same, and to the laws and statutes of the realm.

Nor quakers.

By § 14. It is further provided, that this act shall not extend to quakers, nor to any meetings or assemblies for religious worship held or convened by such persons.

How conviction to be made and levied.

§ 15. Every person guilty of any offence for which any pecuniary penalty or forfeiture is imposed by this act, in respect of which no special provision is made, shall and may be convicted thereof by information upon the oath of any one credible witness before any two justices of the peace for the county, &c. wherein such offence shall be committed; and all and every the pecuniary penalties or forfeitures which shall be incurred or become payable for any offence against this act shall be levied by distress under the hand and seal of two justices for the county, &c. in which any such offence was committed, or where the forfeiture was incurred, and shall when levied be paid one moiety to the informer, and the other moiety to the poor of the parish, in which the offence was committed; and in case of no sufficient distress, it shall be lawful for any such justices respectively before whom the offender shall be convicted to commit such offender to prison for such time not exceeding three months, as they shall think fit.

Appeal.

§ 16. In case any person, who shall hereafter be convicted of any of the offences punishable by this act, shall conceive himself to be aggrieved by such conviction, then it shall be lawful for such person respectively, and he shall appeal to the general or quarter sessions of the peace holden next after such conviction in and for the county, &c., giving unto the justices before whom such conviction shall be made notice in writing within eight days after any such conviction, of his intention to prefer such appeal; and the said justices in their said general or quarter sessions shall proceed to the hearing and determination of the matter of such appeal, and make such order therein, and award such costs to be paid by and to either party, not exceeding 40*s*. as they shall think fit.

Time for suing for penalties.

But by § 17. No penalty or forfeiture shall be recoverable under this act, unless the same shall be sued for, or the offence in respect of which the same is imposed, is prosecuted before the justices or quarter sessions, within six months after the offence shall have been committed; and no person who shall suffer any imprisonment for non-payment of any penalty shall thereafter be liable to the payment of such penalty or forfeiture.

By § 18. Actions upon this statute must be brought in three months.

III. Dissenting Schoolmasters.

By stat. 23 *El. c.* 1. If any person shall keep a schoolmaster, who shall not repair to church, or be allowed by the bishop, he shall forfeit 10*l.* a month, and the schoolmaster shall be imprisoned for a year.

Penalty on schoolmasters not repairing to church.

By stat. 13 & 14 *C.* 2. *c.* 4. § 8, 9. 11. Every schoolmaster keeping any public or private school, and every person instructing or teaching any youth in any house or private family as a tutor or schoolmaster, shall, before his admission, subscribe before the ordinary the declaration of conformity to the liturgy of the church of *England*, on pain of being disabled to hold the said school; and *ipso facto* deprived of the same. And every such school shall be void, as if such person so failing were naturally dead. And if any schoolmaster or other person instructing or teaching youth in any private house or family as tutor or schoolmaster, shall teach any youth as tutor or schoolmaster before licence obtained from the bishop or ordinary of the diocese, and before such subscription as aforesaid, he shall for the first offence be imprisoned three months, and for the second and every other offence be imprisoned three months, and forfeit 5*l.*

Schoolmasters to conform to the liturgy of the church of *England*.

But by stat. 19 *G.* 3. *c.* 44. § 2. No dissenting minister, nor any other protestant dissenting from the church of *England* who shall take the aforesaid oaths, and make and subscribe the above-mentioned declaration against popery, and the declaration hereinbefore mentioned, shall be prosecuted in any court whatsoever for teaching and instructing youth as a tutor or schoolmaster.

19 G.3. c.44. To take the oaths prescribed by the Toleration Act.

§ 3. Provided, that this shall not extend to the enabling of any person dissenting from the church of *England* to hold the mastership of any college or school of royal foundation, or of any other endowed college or school for the education of youth, unless the same shall have been founded since the first year of king *William* and queen *Mary*, for the immediate use and benefit of protestant dissenters.

Not to hold the mastership of any college or school of royal foundation.

Note. The forms of the said oaths and declaration are inserted under title Oaths, Vol. III.

Form of Certificate of a Person having taken the Oaths before a Justice of the Peace, pursuant to Stat. 52 *G.* 3. *c.* 155.

County of ——— } *I* J. P. *esquire, one of his majesty's justices of the peace for the said county of* ———, *do hereby certify that* C. D. *of* ———, *in the county of* ———, *did this day appear before me, and did make, and take, and subscribe, the several oaths and declaration contained and specified in an act made in the fifty-second year of the reign of king* George *the third, intituled* 'An act to repeal certain acts, and amend other acts, relating to religious worship and assemblies, and persons teaching or preaching therein.' *Witness my hand, this* ——— *day of* ———, *in the year, &c.*

J. F.

Distress.

A DISTRESS is the taking of a personal chattel out of the possession of the wrong-doer into the custody of the party injured, to procure satisfaction for the wrong committed; and is of two kinds; either for cattle trespassing and doing damage, or for non-payment of rent or other duties. *Bradby*, 1.

The remedy for recovering rent by way of distress seems first to have come over to us from the civil law. For anciently in the feudal law, not paying attendance at the lord's courts, or not doing the feudal service, was a forfeiture of the estate. But these feudal forfeitures were afterwards turned into distresses, according to the pignorary method of the civil law; that is, the land that is let out to the tenant is hypothecated, as a pledge in his hands, to answer the rent agreed to be paid to the landlord, and the whole profits arising from the land are liable to the lord's seizure for the payment and satisfaction thereof.

Concerning which we will show,

§ I. *For what Causes a Distress shall be.*
[17 C. 2. c. 7. — 2 W. sess. 1. c. 5. — 4 G. 2. c. 28. — 1 & 2 G. 4. c. 23.]

II. *What Goods may be distrained, and what not.*
[2 W. sess. 1. c. 5. — 11 G. 2. c. 19. — 56 G. 3. c. 50.]

III. *At what Time the Distress shall be taken.*

IV. *Where the Distress shall be made.*
[52 H. 3. c. 51. — 9 Ed. 2. c. 9. — 11 G. 2. c. 19.]

V. *Goods fraudulently conveyed off the Premises.*
[11 G. 2. c. 19.]

VI. *Reasonable Distress shall be taken.*
[52 H. 3. c. 4.]

VII. *Manner of making Distress.*

VIII. *Distress how to be demeaned.*
[52 H. 3. c. 4. — 1 & 2 P. & M. c. 12. — 11 G. 2. c. 19.]

IX. *Of Rescous and Pound Breach.*
[2 W. & M. sess. 1. c. 5. — 3 G. 4. c. 126.]

X. *Replevying the Distress.*
[1 P. & M. c. 12. — 11 G. 2. c. 19.]

XI. *Sale, Charges, and Costs of the Distress.*
[2 W. & M. sess. 1. c. 5. — 1 & 2 P. & M. c. 12. — 57 G. 3. c. 93.]

XII. *Irregularity in the Proceedings.*
[11 G. 2. c. 19.]

XIII. *Landlord re-entering on Non-payment.*
[4 G. 2. c. 28.]

I. For what Causes a Distress shall be:

Rent in arrear.

Distress for rent must be for rent in arrear; therefore it may not be made on the same day on which the rent becomes due; for if the rent be paid in any part of that day, whilst a man can see to count money, the payment is good.

Tender of payments.

It must not be after tender of payment; for if the landlord come to distrain the goods of his tenant for rent behind, before the distress the tenant may upon the land tender the arrearages, and if after that a distress be taken it is wrongful; and if the landlord have distrained, if the tenant before the impounding thereof tender the arrearages, the landlord ought to deliver the distress, and if he do not, the detainer is unlawful. Even so it is, in case of a distress by damage feasant (or damage done by cattle trespassing); the tender of amends before the distress maketh the distress unlawful; and after the distress, and before the impounding, the detainer unlawful. 2 *Inst.* 107.

But in this case, although the owner tender sufficient amends, yet he cannot take his beasts out of the pound, if the amends be refused: but he must replevy; and if it be found at the trial that the amends were not sufficient, the person on whom they trespassed shall have damages; if the amends tendered were sufficient, then the owner of the beasts shall have damages. *D. & St.* 112.

4 G. 2. c. 28. Rents-seck and chief rents.

By stat. 4 *G.* 2. *c.* 28. § 5. The like remedy may be had by distress, impounding, and sale, in cases of rent-seck, rents of assize, and chief rents, as in case of rents reserved upon lease.

And it may now be laid down as an universal principle, that a distress may be taken for any kind of rent in arrear; the detention whereof beyond the day of payment is an injury to him that is entitled to receive it. *Woodf.* 356. 3 *Blac. Com.* 6.

There must be actual demise at fixed rent.

A landlord has no right to distrain unless there be an *actual* demise to the tenant at a fixed rent. Therefore where a tenant was in possession under a "memorandum of an agreement to let on lease with a purchasing clause for 21 years, at the clear net rent of 63*l.*, the tenant to enter at any time on or before a parti-

cular day," it was held, that this only amounted to an agreement for a future lease, and that no agreement having been executed, and no rent subsequently paid, the landlord was not entitled to distrain. *Dunk* v. *Hunter*, 5 *B. & A.* 322.

So where a party is in possession under an agreement for a lease, and no other circumstances exist from which an implied tenancy may be raised, the owner cannot during the first year distrain for nonpayment of rent. *Hegan* v. *Johnson*, 2 *Taunt.* 148.

The owner's remedy is by action for use and occupation. *Dunk* v. *Hunter*, per *Bayley* J. 5 *B. & A.* 326, 327.

Two distresses for one rent.

Before stat. 17 *C.* 2. *c.* 7. In case a distress was too little, where sufficient distress was to be had, a man could not distrain again, be the demand never so great; for it was his folly that at first he distrained no more. *Mo.* 7. *Bradby*, 130.

17 C. 2. c. 7.

But now, by the said statute, § 4., in all cases where the value of the cattle distrained shall not be found to be to the full value of the arrears distrained for, the party to whom such arrears were due, his executors or administrators, may distrain again for the residue of the said arrears.

By warrant of a justice of peace in nature of an execution.

So in like manner, where the distress is made by virtue of the warrant of a justice of the peace, in nature of an execution. And the distinction seemeth to be this: where a person hath an entire duty, he shall not split the entire sum, and distrain for part of it at one time, and for part of it at another time, and so *toties quoties*, for several times; for that is great oppression. *Hutchins* v. *Chambers*, 1 *Burr* 579.

So in *Wallis* v. *Savill*, *Lutw.* 1532., a second distress was held unjustifiable, because both distresses were taken for one and the same rent, and it was the lessor's folly that he had not taken a sufficient distress at first.

But if a man seize for the whole sum that is due to him, and only mistake the value of the goods seized, (which may be of very uncertain, or even imaginary value, as pictures, jewels, race-horses, and the like,) there is no reason why he should not afterwards complete his execution by making a further seizure, provided it be for the same sum due. 1 *Burr.* 589.

2 W. & M. sess. 1. c. 5. Distraining where no rent is due.

By stat. 2 *W. & M. sess.* 1. *c.* 5. § 5. If any distress and sale shall be made for rent in arrear and due when none is in truth due, the owner shall recover double value with full costs.

And if the distress be taken of goods without cause, the owner may make *rescous*: but if they be distrained without cause and *impounded*, the owner cannot break the pound and take them out, because they are in the custody of the law. 1 *Inst.* 47. See *post.* § 12.

1 & 2 G. 4. c. 23.

By stat. 1 & 2 *G.* 4. *c.* 23. Landlords or persons acting under their orders may enter upon land allotted to them under any inclosure act, and seize and distrain for rent, notwithstanding the commissioners' award shall not have been executed. *See tit.* "Inclosures," Vol. III.

II. What Goods may be distrained, and what not.

Valuable property.

Distress for rent must be of a thing, whereof a valuable property is in somebody; and therefore dogs, bucks, does, conies, and the like, that are *feræ naturæ*, cannot be distrained. 1 *Inst.* 47.

It may be laid down as a general rule, that all chattels personal are liable to be distrained, unless particularly protected or exempted. 3 *Blac. Com.* 7.

But deer in an enclosed ground may be distrained for rent. *Davies* v. *Powell*, *Willes*, 46. And other animals, as greyhounds and ferrets, may be taken damage-feasant. *Bradby*, 207., *citing Vin. Abr. Distress*, (A).

Separate from the person.

Whatever is in the personal use or occupation of any man is for the time privileged from distress; as a horse on which he is riding, or an axe with which he is cutting wood. *Co. Litt.* 47. *a.* This rule extends even to the case of a distress damage-feasant; for although it is said to have been formerly held, that horses might be severed from the plough, or a horse taken damage-feasant, and impounded, although a rider were upon him; such distress is now determined to be unlawful, as it would be liable to lead to a breach of the peace. *Vide Hargrave's note* (12) *on Co. Litt.* 47. *a.* & 6 *T. R.* 139. So nets or ferrets cannot be taken damage-feasant in a warren, if they are in the hands of a person using them. And although it was formerly considered, that a cart and horses when carrying corn, or hay, might be distrained for rent-service, it seems now to be held, that such a distress would be illegal, as being made on things in immediate use. On the same ground it has been determined, that a loom cannot be distrained when in the hands of a weaver; nor wearing apparel, if in actual use; but if put off, though only for the purpose of repose, it is liable to be taken as a distress for rent. *Bradby*, 207, 208., *and the authorities there collected*.

For maintenance of trades.

Valuable things in the way of trade are not liable to distress. As a horse standing in a smith's shop to be shoed, or in a common inn; or cloth at a tailor's house, or corn sent to a mill or market. For all these are protected and privileged for the benefit of trade. 3 *Blac. Com.* 8. Again, goods of a principal in the hands of a factor, are privileged from distress for rent due from such factor to his landlord: on the ground that the rule of public convenience, out of which the privilege arises is within the exemption of a landlord's general right to distrain, and therefore that such goods are protected for the benefit of trade. *Gilman* v. *Elton*, *M.* 1821. 6 *Moore*, *C. P.* 243.

Carriages and Horses at livery.

But these general rules must be understood with some limitations. For although the goods of a guest at a public inn are privileged from distress, because such a place is *publici juris*, and all men have a right to use it without molestation: yet this exemption was held not to extend to the case of a chariot standing in the coach-house of a livery-stable keeper; for that is not a common inn, and the hire of its standing may be considered as part of the profits of the premises. *Francis* v. *Wyatt*, 3 *Burr.* 1498. *S. C.* 1 *Blac. Rep.* 483. The goods to be exempted from distress must also be within the very precincts of the inn, and not on other premises at a distance belonging to it. And even within the inn itself, the exemption does not extend to the goods of a person dwelling therein as a tenant, rather than a guest. *Bradby*, 208, 209.

Tools of a man's profession.

Beasts of the plough.

The tools, utensils, or instruments of a man's trade or profession, as the axe of the carpenter, or the book of a scholar, a stocking-frame or a loom, implements of husbandry, beasts of the plough and sheep, are also privileged from distress, not only

while in actual use, but whilst any other sufficient distress can be found on the premises. *Co. Lit.* 47. *a.* *Simpson* v. *Harlopp*, *Willes*, 512. *Gorton* v. *Falkner*, 4 *T. R.* 565. & *vide* 1 *Sclw. N. P.* 643.

But this rule holds only in distresses for rent-arrear, amerciaments, and the like; but doth not extend to cases where a distress is given, in the nature of an execution, by any particular statute, as for poor-rates, and the like. 3 *Salk.* 136. *Bradby*, 212.

So in *Hutchins* v. *Chambers*, 1 *Burr.* 579. On a special verdict: several geldings were distrained for the poor-rate, which were stated to be beasts of the plough and cart; when there were other goods more than sufficient to answer the value of the demand. It was objected that by stat. 51 *H.* 3. *st.* 4. (which was also in affirmance of the common law,) *none shall be distrained by his beasts that* gaigne *his land.* The court were unanimously of opinion, that beasts of the plough are distrainable under stat. 43 *Eliz. c.* 2., and such like acts of parliament.

Things fixed to the freehold.

Furnaces, cauldrons, or other things fixed to the freehold, or the doors or windows of a house, or the like, cannot be distrained. *Co. Lit.* 47. *b.*

In trespass for taking divers "goods, chattels, and effects," held that damages might be recovered for taking *fixtures*. *Pitt* v. *Shew and others*, 4 *B.* & *A.* 206.

A sheriff has no right under a *fi. fa.* to seize fixtures (*e. g.* set pots, ovens, and ranges,) where the house in which they are situated is the freehold of the person against whom the execution issues. *Winn* v. *Ingilby*, *Bart. and Hauxwell*, *E.* 3 *G.* 4. 5 *B.* & *A.* 625. For these were fixtures which would go to the *heir*, and not to *the executor*, and they were not liable to be taken as goods and chattels under an execution. The house where they were fixed was the freehold of the plaintiff, which distinguished this case from *Elwes* v. *Maw*, 3 *East*, 38., and *exparte Quincy*, 1 *Atk.* 477., which were cited.

A mill-stone is not distrainable, though it be removed out of its proper place in order to be picked; because such removal is out of necessity, and the stone still continues part of the mill; so it is of a smith's anvil on which he works, for this is accounted part of the forge, though it be not actually fixed by nails to the shop. *Bro. Abr. Distress*, *pl.* 23.

Things for which a replevin will not lie.

Things for which a replevin will not lie, so as to be known again, as money out of a bag, cannot be distrained. 2 *Bac. Abr.* 109.

But money in a bag sealed may be distrained; for the bag sealed may be known again.

Goods in custody of the law.

Goods in the custody of the law are not distrainable; therefore goods distrained for damage-feasant cannot be taken for rent, nor goods in a bailiff's hands on an execution, nor goods seized by process at the suit of the king, because they are in the custody of the law. *Co. Lit.* 47. *Park.* 120.

Corn or hay cut.

2 W. & M. sess. 1. c. 5.

At common law such things only can be distrained as may be restored to the owner in the same plight as they were in at the time of taking them, and for this reason, sheaves and shocks of corn were not distrainable; but by stat. 2 *W.* & *M. sess.* 1. *c.* 5. § 3. persons having rent-arrear on any demise, lease, or contract, may seize and secure any sheaves or cocks of corn, or corn loose

or in the straw, or hay being in any barn or granary, or upon any hovel, stack, or rick, or otherwise upon any part of the land charged with rent, and may lock up or detain the same in the place where found, in the nature of a distress; so as the same be not removed to the damage of the owner, out of the place where found and seized, but be kept there (as impounded) till replevied or sold.

11 G. 2. c. 19. Growing crops.

And by stat. 11 *G.* 2. *c.* 19. § 8. The landlord or his steward, or other person empowered by him, may take and seize any cattle or stock feeding on any common appendant, or appurtenant, or belonging to the premises, corn, grass, hops, roots, fruits, pulse, or other *product* growing on the estate, as a distress for rent; and the same may cut, gather, make, cure, carry, and lay up when ripe, in the barns or other proper place on the premises; and if there shall be no barn or proper place on the premises demised, then in any other barn or proper place which he shall procure, as near as may be to the premises; the appraisement whereof shall be taken when cut, gathered, cured and made, and not before.

§ 9. And notice of the place where the goods so distrained shall be lodged, shall in one week after the lodging thereof be given to the tenant, or left at the last place of his abode.

Growing crops taken under a *fi. fa.* in the hands of the sheriff's vendee, are protected from the landlord's distress for rent subsequently accruing. *Peacock* v. *Purvis*, 2 *Brod. & Bing.* 362.

A sale by a landlord of standing corn, taken as a distress before it is ripe, is void, and the tenant need not replevy; but as no legal damage could arise to the tenant from such sale, he could have no ground of action in respect thereof. Where, therefore, the plaintiff had stated this as damage in his declaration, and had recovered damages in part on that account, the court of K. B. directed a new trial, unless he would consent to reduce the verdict. *Owen* v. *Legh and another*, 3 *B. & A.* 470.

Trees, shrubs, or plants.

Trees, shrubs, and plants growing in a nursery-ground, cannot be distrained for rent. *Clark* v. *Gaskarth*, 8 *Taunt.* 431. 2 *Moore, C. P.* 491. *S. C.* *See also Clark* v. *Calvert*, 3 *Moore, C. P.* 96.

The word "product" in stat. 11 *G.* 2. *c.* 19. § 8. does not extend to trees and shrubs growing in a nursery-man's ground, but it is confined to products of a similar nature with those specified in that section, to all of which the process of becoming ripe, and of being cut, gathered, made, and laid up when ripe, was incidental. *Clark* v. *Gaskarth*, 8 *Taunt.* 431.

56 G. 3. c. 50. No sheriff or other officer shall sell or carry off from any lands any straw, chaff, or turnips, in any case, nor any hay or other produce, contrary to the covenant.

By stat. 56 *G.* 3. *c.* 50. § 1. It is enacted, that no sheriff or other officer in *England* or *Wales* shall, by virtue of any process of any court of law, carry off or sell, or dispose of for the purpose of being carried off from any lands let to farm, any straw thrashed or unthrashed, or any straw of crops growing, or any chaff, colder or any turnips, or any manure, compost, ashes or sea-weed, in any case whatsoever, nor any hay, grass, or vetches, nor any roots or vegetables, being produce of such lands, in any case where, according to any covenant or written agreement entered into and made for the benefit of the owner or landlord of any farm, such hay, grass or grasses, tares and vetches, roots or vegetables, ought not to be taken off or withholden from such lands, or which by the tenor or effect of such covenants or agreements ought to be used

56 G. 3. c. 50.

or expended thereon; and of which covenants or agreements such sheriff or other officer shall have received a written notice before he shall have proceeded to sale.

§ 2. Provides, that the tenant shall give notice to the sheriff of the existence of covenants; and the sheriff to the landlord.

§ 3. Empowers such sheriff or other officer to dispose of the produce, subject to an agreement to expend it on the land.

Landlords not to distrain for rent on purchasers of crops severed from the soil, or other things sold subject to agreement.

And by § 6. In all cases where any purchaser or purchasers of any crop or produce hereinbefore mentioned shall have entered into any agreement with such sheriff or other officer, touching the use and expenditure thereof on lands let to farm, it shall not be lawful for the owner or landlord of such lands to distrain for any rent on any corn, hay, straw, or other produce thereof, which, at the time of such sale, and the execution of such agreement entered into under the provisions of this act, shall have been severed from the soil, and sold, subject to such agreement by such sheriff or other officer; nor on any turnips, whether drawn or growing, if sold according to the provisions of this act; nor on any horses, sheep, or other cattle, nor on any beasts whatsoever, nor on any waggons, carts, or other implements of husbandry, which any person or persons shall employ, keep, or use on such lands for the purpose of thrashing out, carrying, or consuming any such corn, hay, straw, turnips, or other produce under the provisions of the act; and the agreement or agreements directed to be entered into between the sheriff or other officer, and the purchaser or purchasers of such crops and produce as hereinbefore are mentioned.

The crown, or its process, not being in any way alluded to in stat. 56 *G.* 3. *c.* 50., is not affected by the provisions it contains for preserving covenants between the tenants and landlords of lands, &c. let to farm; the court of exchequer, therefore, held that the sheriff, on a writ of *venditioni exponas* issued after an extent, could not sell the crops, &c, taken under it, subject to any condition that the same should be used and expended according to the covenants of the lease. *R.* v. *Osbourne, Sitt. after T. T.* 58 *G.* 3. 6 *Price*, 94.

Cattle depastured.

Generally, whatever goods and chattels the landlord finds upon the premises, whether they in fact belong to the tenant or a stranger, are distrainable by him for rent; for otherwise a door would be opened to infinite frauds upon the landlord; and the stranger hath his remedy over by action on the case against the tenant, if by the tenant's fault the goods are distrained so that he cannot render them when called upon. 3 *Blac. Com.* 8.

But on particular circumstances perhaps a court of equity may relieve. As in *Fowkes* v. *Joyce*, 3 *Lev.* 260. 2 *Vent.* 50. A person driving sheep to *London* to sell, by agreement with the master of an inn, put them into the ground at so much a score for the night. The landlord consented to their staying there, and afterwards distrained them for rent due to him from the master of the inn. And it was adjudged for the landlord. But the owner of the cattle was afterwards relieved in equity on the ground of fraud in the landlord, and he was decreed to pay all the costs both of law and equity. *Prac. Ch.* 7. 2 *Vern.* 131.

And it should seem that at this day a court of law would be of opinion, that cattle belonging to a drover being put into a ground

with the consent of the occupier to graze only one night, in their way to a fair or market, were not liable to the distress of the landlord for rent. 2 *Saund.* 290. n. (7).

Cattle escaped on the premises.

Where a stranger's beasts escape into the land, they may be distrained for rent, though they have not been levant and couchant, (that is, not having so long remained upon the ground as to have lain down and risen up again to feed,) provided they are trespassers; but if the tenant of the land is in default, in not repairing his fences, whereby the beasts came into the land, the landlord cannot distrain such beasts, though they have been levant and couchant, unless he have caused notice to be given to the owner, and the owner suffers them to remain there afterwards, *Lutw.* 364.

But such notice, it is said, is not necessary where the distress is by the lord of the fee for an ancient rent, or by the grantee of a rentcharge. *Woodf.* 301.

Where the cattle escape accidentally, there they are not distrainable, until they have been levant and couchant; but if they escape by default of their owner, they are distrainable the first minute. *Per Treby*, C. J. 1 *Ld. Raym.* 169.

And if the cattle of one man escape into the land of another, it is no excuse that the fences were out of repair, if they were trespassers in the place from whence they came. If it be a close, the owner of the cattle must show an interest or right to put them there. If it be a way, he must show that he was lawfully using the way; for the property is in the owner of the soil, subject to an easement for the benefit of the public. *Per Heath* J. *Dovaston* v. *Payne*, 2 *H. Blac.* 531.

Cattle damage-feasant.

A man may distrain beasts *damage-feasant*, that is, doing damage or trespassing upon his land; for all chattels whatever are distrainable *damage-feasant*, it being but natural justice that whatever doth the injury should be a pledge to make compensation for it. *Gilb. Dist.* 24. 38. 3 *Blac. Com.* 6.

If a man take cattle, and put them into the land of another man, the tenant of the land may take these cattle, damage-feasant, though the owner was not privy to the cattle being damage-feasant, and he may keep them against the true owner, till satisfaction of the damages. 1 *Roll. Abr.* 665. *Roll. Rep.* 449.

If a man come to distrain (beasts damage-feasant), and see the beasts in his ground, and the owner chase them out on purpose before the distress taken, yet the owner of the soil cannot distrain them. *Co. Lit.* 161. 2 *Bac. Abr.* 354.

For distress damage-feasant is the strictest distress that is, and the thing distrained must be taken in the very act; for if the goods are once off, though on fresh pursuit, the owner of the ground cannot take them. 12 *Mod.* 661.

If ten head of cattle were doing damage, a man cannot take one of them and keep it till he be satisfied for the whole damage, but for its own damage only; but he may bring an action of trespass for the rest. *Vasper* v. *Edwards*, 12 *Mod.* 660.

If a man hath common for ten cattle, and he puts in more, the surplusage above ten may be taken damage-feasant. 1 *Roll. Abr.* 665.

But this must be where the number is absolutely certain, as for ten, twenty, or thirty cattle, without any relation to the quan-

tity of land, and not where he claims for so many cattle for such a number of acres; for in the former case the overcharge is clear and self-evident, but in the latter it depends upon the number of acres, and requires a medium to determine the number of cattle; that is, an admeasurement of the land. And the court said, the right of distraining seemed to turn upon this, that wherever there is a *colour of right* for putting in the cattle a commoner cannot distrain, because it would be judging for himself in a question that depends upon a more competent enquiry: but where cattle are put upon the common *without* any colour or pretence of right, the commoner may distrain them; and therefore he may distrain the cattle of a stranger. *Hall* v. *Harding*, 4 *Burr.* 2426. 1 *Blac. Rep.* 673.

III. At what Time the Distress shall be taken.

For a rent or service the lord cannot distrain in the night, but in the daytime; and so it is of a rent-charge: but for damage-feasant, one may distrain in the night; otherwise it may be, the beasts may be gone before he can take them. 1 *Inst.* 142. (*a*).

For before sunrising, or after sunset, no man can distrain but for damage-feasant. *Mirrour*, *c.* 2. § 26. *See also* 7 *Rep.* 7. (*a*).

IV. Where the Distress shall be made.

Church lands.

By stat. 9 *Ed.* 2. *c.* 9. The king's officers, as sheriffs and others, shall not take distresses in the fees wherewith churches in times past have been endowed: but distresses may be taken in possessions of the church newly purchased.

On the premises.

A man may distrain in places or lands within the fee, liable to distress, and not elsewhere. 52 *H.* 3. *c.* 51. 2 *Inst.* 131. *Mir.* *c.* 2. § 26.

On the common.

And by stat. 11 *G.* 2. *c.* 19. § 8. The landlord may distrain any cattle or stock of the tenant, depasturing on any common appendant or appurtenant, or any ways belonging to the premises demised.

In the highway.

By 52 *H.* 3. *c.* 51. No person (except the king's officers) shall take distresses in the king's highway.

And the reason is, because the king's subjects ought to have free passage as well to fairs and markets as about their other affairs. But this rule is confined to the first taking of the distress; for if the lord coming to distrain see the beasts within his fee, and before he can distrain them they are chased into the highway, he may distrain them therein. 2 *Inst.* 131, 132.

V. Goods fraudulently conveyed off the Premises.

11 G. 2. c. 19. May be seized within 30 days.

By stat. 11 *G.* 2. *c.* 19. § 1. If any tenant for life, years, at will, sufferance, or otherwise, of any messuages, lands, tenements, or hereditaments, shall fraudulently or clandestinely convey off the premises his or her goods or chattels, to prevent the landlord from distraining for arrears of rent reserved, such landlord, or any person by him lawfully empowered, may in thirty days next after such conveying away seize the same wherever they shall be found,

as a distress, and dispose of them in such manner as if they had been distrained in and upon the premises.

11 G. 2. c. 19.

§ 2. But no landlord shall take any such goods as a distress which shall be sold *bonâ fide*, and for a valuable consideration, before such seizure made to any person not privy to such fraud.

Except when *bonâ fide* sold.

§ 7. Where any goods or chattels so fraudulently or clandestinely conveyed or carried away shall be put, placed, or kept in any house, barn, stable, out-house, yard, close, or place locked up, fastened, or otherwise secured, so as to prevent such goods or chattels from being taken and seized as a distress for arrears of rent, it shall be lawful for the landlord or his steward, bailiff, receiver, or other person or persons empowered, to take and seize as a distress for rent such goods and chattels (first calling to his assistance the constable, or other peace-officer of the hundred, borough, parish, district, or place where the same shall be suspected to be concealed, and in case of a dwelling-house, oath being also first made (H) before a justice of a reasonable ground to suspect that such goods or chattels are therein,) in the daytime, to break open (I) and enter into such house, barn, stable, outhouse, yard, close, and place; and to take and seize such goods and chattels for the said arrears of rent, as he might have done if they had been put in any open field or place.

Aid of the constables and justices.

(H)

(I)

§ 3. And if any such tenant shall so fraudulently remove and convey away his goods or chattels (*a*), or if any person or persons shall wilfully and knowingly aid or assist him in such fraudulent conveying away or carrying off, of any part of his goods or chattels, or in concealing the same, every person so offending shall forfeit to the landlord double the value of the goods by him or them respectively carried off or concealed, to be recovered in any court of record at *Westminster*.

Persons assisting to forfeit double the value.

§ 4. But where the goods and chattels so fraudulently carried off or concealed shall not exceed the value of 50*l.* the landlord, or his agent in his behalf, may exhibit a complaint in writing (A) before two justices of the peace of the same county or division, residing near the place whence such goods and chattels were removed, or near the place where the same were found, not being interested in the lands or tenements whence such goods were removed; who may summon (B) the parties concerned, examine the fact, and all proper witnesses upon oath, (or if it is a quaker, upon affirmation required by law,) and in a summary way determine whether such person or persons be guilty of the offence with which he or they are charged, and enquire in like manner of the value of such goods

Where goods not exceeding 50*l.* in value are concealed, &c. complaint may be made to two justices.

(A)

(B)

(*a*) A creditor may, with the assent of the debtor, remove goods from the premises for the payment of a *bonâ fide* debt, without incurring the penalty of stat. 11 *G. 2. c.* 19. § 3. against persons assisting in removing goods. The stat. seems to have had in view a fraudulent removal by the tenant, where the object was to withdraw the property from the landlord's reach, for the purpose of securing it for his own benefit. Such an object may be accomplished either by a clandestine removal of the tenant himself, or by his procuring some other person to make a pretended purchase on the premises, and remove the property under colour of such purchase. *Bach* v. *Meats*, 5 *M. & S.* 200. *Semble*, a withdrawing cattle from a place, and removing them where not likely to be found, would be a concealment within the statute, though turned into an open field, *Stanley* v. *Wharton*, 9 *Pri.* 301.

11 G. 2. c. 19. (C) (D) Offender to pay double value.

and chattels; and upon full proof of the offence by order (C) (D) under their hands and seals the said justices shall adjudge the offender or offenders to pay double the value of the said goods and chattels to such landlord, his bailiff, servant, or agent, at such time as the said justices shall appoint; and if the offender or offenders, having notice of such order, shall refuse or neglect so to do, they shall by their warrant (E) levy the same by distress, and for want of such distress (F) may commit the offender or offenders to the house of correction (G) there to be kept to hard labour for the space of six months, unless the money so ordered to be paid as aforesaid shall be sooner satisfied. (a)

(E) (F) (G)

It is not necessary to set out the evidence, in an order made by one or more justices of the peace.

R. v. *Bissex*, *T.* 29 & 30 *G.* 2. *MS.* (B). *S. C. Sayer*, 304. Order made by two justices, reciting that a complaint had been made to them in writing by *A. Clavey* against *J. Bissex*, that he the said *Clavey* demised his estate in the parish of *Shelley*, in the county of *Somerset*, to *William Thatcher* at the yearly rent of 44*l.*, and that there was due in arrear from *Thatcher* to him for rent of the said estate, on the 5th day of *April* last, 24*l.* 15*s.* 8½*d.*; and that he the said *Clavey* would have distrained the goods and chattels of the said *W. Thatcher* upon the said estate, in order to obtain satisfaction of the said rent; but to prevent him from so doing, the said *Bissex*, on or about the 27th, 28th, and 29th days of *August* last, did knowingly and wilfully aid and assist the said *Thatcher* in fraudulently conveying and carry off from the said estate his the said *Thatcher's* goods and chattels, and also in concealing the same, being under the value of 50*l.*; that is to say, two cows, one heifer, and ten hundred weight of cheese, of the value of 20*l.*; whereby the said *Clavey* was prevented from distraining the same, in order to obtain satisfaction for the said rent, and contrary to the statute 11 *G.* 2., and therefore praying us to grant him our warrant of summons, requiring you the said *J. Bissex* to appear before us, and that we would examine the fact, and thereupon make such order therein for his relief as the said statute directs and requires, and as should be agreeable to justice; whereupon we the said justices, residing near the said estate from whence the said goods and cattle were removed, and neither of us any way interested in the said estate, did issue our warrant of summons, requiring you the said *J. Bissex* to attend us thereon to answer the said complaint; and you having attended accordingly, and we in your presence having examined the witnesses produced by the said *A. Clavey* upon oath, and heard what was alleged by you in your defence, do adjudge that the said complaint is true; and that the said goods and cattle of the said *W. Thatcher*, which you so aided and assisted in conveying and carrying off from the said estate, and also in concealing the same, were of the value of 20*l.*, and that you have thereby forfeited double the value of the said goods and cattle, being the sum of 40*l.*, to the said complainant *A. Clavey*, by virtue of the said statute: we, therefore, in pursuance of the said statute, do adjudge, order, and require you the said *J. Bissex*,

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(a) The value of the goods being under £50 does not render it compulsory on the party to have recourse to the summary remedy before two justices under this § 4. *Stanley* v. *Wharton*, 9 *Pri.* 301.

This act is also entirely and purely remedial, and not penal. *S. C.*

within the space of three days from the date hereof, to pay to the said *A. Clavey* the sum of 40*l.*, which if you shall neglect to do, such further proceedings will be then had against you to enforce the payment thereof as the said statute directs and requires. Given under our hands and seals this 5th day of *January*, 1756 — This order was affirmed by the sessions upon appeal. Both the orders were removed by *certiorari* into the K. B. It was moved to quash the same. Objections taken: 1. The complaint is said to be taken in writing, but not upon oath. 2. It is only said, that he demised to *W. Thatcher*; but not said for what estate or term. 3. It is stated, so much was due for rent, but not said for what term; it might be due twenty years ago: it is not stated to be due when *Thatcher* removed his goods. 4. The words of the order are, goods and *cattle*; of the statute, goods and *chattels*. 5. No certain time is alleged when the defendant aided and assisted; only said, on or about the 26th, 27th, or 28th of *August*. 6. Not stated that *Thatcher* did carry off his goods; only that *Bissex* did aid and assist him in carrying them off. 7. They adjudge the complaint true, but do not state the evidence; and this is a conviction, not an order; and for any thing that appears, it might be upon *Clavey*'s evidence alone. 8. It is not stated that the goods were under the value of 50*l.*, which is the ground of the justices' jurisdiction. 9. The words of the statute are, if any person shall be a tenant of any lands, tenements, or hereditaments: the word used in the order is *estate*; which may be a thing incorporeal, or may mean the interest in the land, and so not within the statute. 10. It should appear, whether the landlord has a right to distrain: by stat. 8 *An. c.* 14. the landlord may distrain at any time within six months after the expiration of the term: it does not appear that these six months were not expired; and if they were, this is no offence. — After consideration, Mr. *J. Denison* delivered the resolution of the court: I think the most material objection is, whether this is an order or a conviction. If a conviction, the evidence ought to have been set out. And there has been no doubt, (notwithstanding the case of *R.* v. *Pulleine*, 1 *Salk.* 369.) that in a conviction the evidence must be set out, that the court may judge upon it. So it was held by Ld. *Hardwicke* in the case of *R.* v. *Lloyd*, *Str.* 996.; and in that case it was objected that as it subjected the party to a penalty, though in the statute it was called an order, yet it should be construed as a conviction; but the court said, every act of the justices, which subjects the party to a penalty, shall not be construed as a conviction, *R.* v. *Venables*, *Str.* 630. 2 *Ld. Raym.* 1406., upon the statute for licensing ale-houses, considered as an order. *R.* v. *Blackwell*, *M.* 4. *G.*, which the court said was a strong case, and must be considered as an order. I understood from Ld. *Hardwicke*, in the case of *R.* v. *Lloyd*, that his ground of the difference was founded upon the expressions of the statute, and not upon the penalty; as where the words of the statute are, "of which he shall be convicted," it is to be construed as a conviction. Here it is extremely strong; the statute calls it an order: and in the nature of it, it is an examination upon a complaint. If the party were never summoned, this court upon affidavit will grant an information against the justices; but the summons need not be set out; and the court will intend that the justices have done right,

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in case the contrary does not appear upon the face of the order As to the 1st objection: this is not an information, but a complaint; when the party is summoned, the witnesses are to to be examined upon oath, but the complaint need not be upon oath. In answer to the 2d objection, as the order has followed the words of the statute, we will not intend it a case wherein the justices had not a jurisdiction. The court will not, in case of an order, intend that the justices have done wrong. As to the third objection: it is sufficiently alleged in an order; his assisting the tenant to carry away the goods, as it is here alleged, is sufficient to show the rent continued then to be in arrear; and the rather, as the defendant might have availed himself of the rent paid, by proving it before the justices. I much doubt whether in a declaration it would not be sufficient to say, the rent was in arrear at such a day; and I think it would lie upon the defendant to prove that the rent does not remain in arrear. As to its not being said, for what time the rent was due, this is mere matter of form. As to the 5th objection: *about*, in common parlance, means in this case three days, or near it. They might be three days in carrying the goods away. The days are not material, even in legal proceedings. 1 *Ld. Raym.* 581. And in the case of *R.* v. *Simpson*, *H.* 3 *G.* 2. *Str.* 46. (*a*), the day and hour in a conviction are not material. By this statute no time is limited when the complaint shall be made; it may be made at any time. Suppose that the defendant had paid the penalty on a different complaint made, he might easily have shown it. As to the 6th, the answer is obvious: If *Thatcher* had not carried his goods away, the defendant could not have aided in carrying them. The statute makes two offences; one, carrying the goods away; the other, aiding in carrying them away. It is only necessary here to state the offence which the defendant had been guilty of, which this order does in the words of the statute. In the case of *R.* v. *Monk*, *M.* 13 *G.* 2., there was a conviction for aiding and assisting in killing a buck. It was objected, that it was not charged the buck was killed. But the court held that as the conviction was in the words of the statute, it was sufficient. And the court held they were all principals, as well those that killed the buck as those that assisted. And this was the case of a conviction. — All the other objections may have this general answer; that in case of orders, where the justices have jurisdiction, we will intend they have acted right; and if they have done wrong, they may be punished by an information. — Let the orders be confirmed.

An alternative charge, though bad in an indictment, may be good in an order.

So in *R.* v. *Middlehurst*, 1 *Burr.* 399. Two justices made an order against one *T. M.* for wilfully and knowingly aiding and assisting *J. C.*, the tenant of Sir *T. F.*, in fraudulently removing and conveying away five cows and other goods, *or* in concealing the same. Which order, on appeal to the sessions, was confirmed. It was moved to quash these orders, upon two objections: 1. That it is not described sufficiently what the offence is. 2. That the charge was in the disjunctive, that he assisted the tenant in removing *or* concealing the goods. By Ld. *Mansfield* C. J. *Upon indictments* it hath been determined that an alternative

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(*a*) See tit. Conviction, *ante*, 596.

charge is not good (as, forged *or* caused to be forged); though one only need be proved, if laid conjunctively (as, forged *and* caused to be forged); but I do not see the reason of it: the substance is exactly the same; the defendant must come prepared against both; and it makes no difference to him in any respect. But this is *an order;* and being good in substance, needs not be literally so strict. — And by the court, rule discharged, and both orders affirmed.

Justices either of the county *from* which the tenants fraudulently remove goods, or of that *in which they are concealed,* may convict the offenders within their respective counties. *R.* v. *Morgan, Cald.* 156.

But in order to justify the landlord in seizing, under this statute, within thirty days, goods removed off the premises, as a distress for rent wherever found, the removal must have taken place *after the rent became due,* and must have been secret, and *not open* and in face of day, as in such case the removal could not be said to be clandestine, within the meaning of the statute. *Watson* v. *Main,* 3 *Esp.* 15. *See also* 2 *Saund.* 284. *n.* 2.

The statute applies to the goods of the *tenant* only which are fraudulently removed, and not to those of a stranger. *Thornton* v. *Adams and others,* 5 *M. & S.* 38.

11 G. 2. c. 19. Appeal.

By stat. 11 *G.* 2. *c.* 19. § 5. Persons aggrieved by order of such two justices may appeal to the next general or quarter sessions; who may give costs to either party, and whose determination shall be final.

(K)

§ 6. And where the party appealing shall enter into recognisance (K) with one or two sureties, in double the sum so ordered to be paid, with condition to appear at such sessions, the order of the said two justices shall not be executed against him in the mean time.

VI. That reasonable Distress shall be taken.

52 H. 3. c. 4. Distress to be reasonable.

By stat. 52 *H.* 3. *c.* 4. Distresses shall be reasonable and not too great; and he that taketh great and unreasonable distresses shall be grievously amerced.

For example, if the lord distrain two or three oxen for 12*d.* or the like small sum, and the owner replevy the oxen, and the lord avow the taking of them for the 12*d.*; of his own showing, he shall make fine; or the party may have his action upon this statute. 2 *Inst.* 107.

If the lord distrain an ox, or horse, for a penny; if there were no other distress upon the land holden, the distress is not excessive; but if there were a sheep, or a swine, or the like, then the taking of the ox or horse is excessive, because he might have taken a beast of less value. 2 *Inst.* 107.

If part only of a debt be levied on a *fieri facias,* the plaintiff may have a *capias ad satisfaciendum* for the residue. 3 *Blac. Com.* 417. *See post,* Vol. II. p. 63.

VII. Manner of taking Distress.

Breaking gates.

Gates or inclosures may not be broken open, nor thrown down, to make a distress. 1 *Inst.* 161.

Opening doors.

Nor may the lessor enter into the tenant's house, unless the doors are open. 2 *Bac. Abr. tit. Distress*, 347.

Upon a question about taking a distress, it was holden by the Ld. C. J. *Hardwicke*, (*Exeter Sum. Ass.* 1736,) that a padlock put on a barn-door could not be opened by force, to take the corn by way of distress. 9 *Vin. Abr.* 128. *pl.* 6.

But if the outer door of a house be open, one may break an inner door to take a distress. *Cases Temp. Hardw.* 168. *Bull. N. P.* 7*th edit.* 81 *c.*

Vide stat. 11 G. 2. c. 19. § 7. ante, p. 875.

But except where the goods are clandestinely conveyed, it may seem from what hath been said that the landlord hath no means to come at the goods in order to make distress, if the tenant shall think fit to lock up his gates, and shut the doors. *Vide stat.* 11 *G.* 2. *c.* 19. § 7. *ante*, p. 875.

Part in name of the whole.

If a landlord come into a house, and seize upon some goods as a distress, in the name of all the goods of the house, that will be a good seizure of all. 6 *Mod.* 215. 9 *Vin. Abr.* 127.

VIII. Distress how to be demeaned.

52 H. 3. c. 4. Impounding out of the county.

By stat. 52 *H.* 3. *c.* 4. None shall cause any distress that he hath taken to be driven out of the county where it was taken; and if one neighbour do so to another of his own authority, (as for damage-feasant, or rent-charge, 2 *Inst.* 206.) he shall make fine as for a thing done against the peace; and if the lord so presume to do against the tenant, he shall be grievously punished by amerciament.

Before this act, at the common law, a man might have driven the distress to what county he pleased; which was mischievous for two causes: 1. Because the tenant was bound to give the beasts being impounded in an open pound sustenance, and being carried into another county by common intendment, he could have no knowledge where they were. 2. He could not know where to have a replevy: but the party was, before this statute, driven to his action upon the case. 2 *Inst.* 106.

And albeit this statute be in the negative, yet if the tenancy be in one county, and the manor in another county, the lord may drive the distress which he taketh in the tenancy to his manor in the other county: for the tenant is out of both the said mischiefs; for the tenant, by doing suit and service to the manor by common intendment, may know what is done there, and therefore may give his beast sustenance. And to know where to have his replevy, the bailiff of the manor usually drives the cattle distrained to the pound of the manor. And hereby it is to be noted, that a case out of the mischief is out of the meaning of the law, though it be within the letter. 2 *Inst.* 106.

1 & 2 P. & M. c. 12. Impounding out of the hundred, &c.

And by stat. 1 & 2 *P.* & *M.* *c.* 12. § 1. It is further enacted, that no distress of cattle shall be driven out of the hundred, rape, wapentake, or lathe, where such distress shall be taken, except it be to a pound overt within the same shire, not above three miles distant from the place where the said distress was taken; and no cattle nor other goods distrained for any cause at one time shall be impounded in several places, whereby the owner may be constrained to sue several replevies; on pain of 100*s.* to the party grieved, and treble damages.

Gimbart v. *Pelah*, 2 *Stra.* 1272. The defendant justified impounding cattle damage-feasant. It appeared that the impounding was in another county. And *Lee* C. J. held, it did not make him a trespasser, though it subjected him to the penalty of stat. 1 & 2 *P.* & *M.* *c.* 12.

Cattle, &c. how to be impounded.

Cattle may be impounded in a pound *overt* (*a*) or public pound, or on the premises, where the owner may give them meat and drink without trespass to any other. But if they are put in a pound *covert*, as in a house or private pound, the distrainer must keep them with meat and drink at his peril, and for which he shall have no satisfaction. 1 *Inst.* 47.

Dead goods, how to be impounded.

But if the distress be of utensils of household, or such like dead goods, which may take harm by wet or weather, or be stolen away; there he must impound them in a house, or other pound *covert*, within three miles in the said county; for if he impound them in a pound *overt* he must answer for them. 1 *Inst.* 47.

11 G. 2. c. 19. Impounding on the premises.

By stat. 11 *G.* 2. *c.* 19. § 10. Any person distraining for rent may impound or otherwise secure the distress, of what kind soever it be, in such place, or on such part of the premises chargeable with the rent, as shall be most convenient; and may appraise and sell the same upon the premises, as any person before might have done off the premises, by virtue of stats. 2 *W.* & *M.* *c.* 5. and 4 *G.* 2. *c.* 28.

Using the goods distrained.

Cattle distrained may not be worked or used. And it seems to be the better opinion, that even milch kine cannot be milked by the distrainer, in order to prevent them from being damaged; because the owner would perhaps have come to milk his cattle before they had sustained any material injury, and it is not necessary for the security of the distrainer, who, if the cattle die without his default, may make another distress. *Bradby*, 241. *and the authorities there cited.*

Distress dying.

So if the distress be lost by the act of God; as if the distress die in the pound, without any default in the distrainer; in such case he who made the distress may distrain again. *Vasper* v. *Edwards*, 1 *Salk.* 248. 12 *Mod.* 660.

Killed.

It is the distrainer's own fault, if he put the distress in a pound which will not hold it; but he cannot justify the tying of cattle in the pound; and if he tie a beast, and it is strangled, he must pay damages. *S. C.*

IX. Of Rescous and Pound-Breach.

Rescous and pound-breach.

By the common law, if a man break the pound or the lock of it, or part of it, he greatly offendeth against the peace, and doth trespass to the king, and to the lord of the fee, and to the sheriff, and hundredors, in breach of the peace, and to the party, and to the delaying of justice; and therefore hue and cry is to be levied against him, as against those who break the peace. *Mir.* *c.* 2. § 26. (See forms L. M. N. O. P. *post.*) And the party who dis-

L. M. N. O. P.

(*a*) By pound *overt* is meant an open pound, as a public pinfold made for that purpose, or an open field, where the owner may go to his goods without trespass. And by pound *covert* is meant a place covered or close, as a house or place where the goods are locked up or secured, where he cannot go to them at his pleasure.

trained may take the goods again, wheresoever he shall find them, and impound them again. 1 *Inst.* 47.

The forcibly rescuing goods distrained, and the rescuing cattle by the breach of the pound in which they have been placed, have been considered as offences at common law, and made the subject of indictment. 1 *Russ.* 523. *and the authorities there cited.*

An indictment will lie for taking goods forcibly, if such taking be proved to be a breach of the peace; and though such goods are the prosecutor's own property, yet, if he take them in that manner, he will be guilty. *Anon*, 3 *Salk.* 187. 1 *Russ.* 70. 523.

But as a mere trespass, without circumstances of violence, is not indictable, it has been doubted whether even a pound breach, which has been considered a greater offence at common law than a rescue, is an indictable offence, if unaccompanied by a breach of the peace. 3 *Burr.* 1701. 1731. 1 *Russ.* 70. 523.

But, on the other hand, it has been submitted, that as pound breach is an injury and insult to public justice, it is indictable *as such* at common law. 2 *Chitt. Crim. L.* 204. *and the authorities there cited.* 1 *Russ.* 523.

The civil remedy, however, given by stat. 2 *W. & M. sess.* 1. *c.* 5. § 4. will, in most cases of a pound breach, or a rescue of goods distrained for rent, be found the most desirable mode of proceeding, where the offenders are responsible persons. That statute enacts, that, upon any pound breach, or rescous of goods distrained for rent, the person grieved thereby shall, in a special action upon the case, recover treble damages and costs against the offender, or against the owner of the goods, if they be afterwards found to have come to his use or possession.

Treble Damages.] In *Firth* v. *Purvis*, 5 *T. R.* 432. It was held to be no answer to an action on this statute, that the rent in demand was tendered after the distress and impounding.

Treble costs, &c.

Treble damages and costs.] In *Lawson* v. *Storey*, 1 *Ld. Raym.* 20. it was adjudged that the costs shall be trebled as well as the damages.

And it is determined, that where an act of parliament gives treble damages for a cause of action, for which at common law a party would only be entitled to single damages, treble costs follow as of course. *Deacon* v. *Morris*, 2 *B. & A.* 393.

What shall be a rescous.

If a man distrain cattle, and as he is driving them to the pound they go into the owner's house, and he refuse to deliver them, this is a rescue in law. 1 *Inst.* 161. 6 *Bac. Abr. tit.* Rescue (A.)

But here we must observe, that there can be no rescous but where the party has had the actual possession of the cattle or other things whereof the rescous is supposed to be made; for if a man come to arrest another, or to distrain, and be disturbed regularly, his remedy is by action on the case. 1 *Inst.* 161. 6 *Bac. Abr.* 87. *and the authorities there cited.*

3 G. 4. c. 126. Punishing persons guilty of pound-breach, where distress was made under general Turnpike act.

By stat. 3 *G.* 4. *c.* 126. § 123. If any person or persons shall release, or attempt to release, any cow, horse, ass, swine, or other live stock or cattle which shall be seized for the purpose of being impounded under the authority of this (General Turnpike) act, from the pound or place where the same shall be so impounded, or shall pull down, damage, or destroy the same pound or place, or any part thereof, or any lock or bolt belonging thereto, or with which the same shall be fastened, or shall rescue or release, or attempt to res-

cue or release, any distress or levy which shall be made, under the authority of this act, until or before such cow, horse, ass, swine, or other live stock or cattle seized or so impounded, or such distress or levy so made shall be discharged by due course of law, every person so offending shall, upon conviction thereof before any one of H. M.'s justices of the peace for the county or place where the offence shall have been committed, either upon confession of the party or parties offending, or upon the oath of one credible witness, and which oath the said justice is hereby authorised and empowered to administer, be committed by such justice, by warrant under his hand and seal, to the common gaol or house of correction of such of the said counties wherein the said offence shall have been committed, there to remain without bail or mainprize, for any time not exceeding three calendar months. See *tit.* Highways, (*Turnpike,*) Vol. II. — 3 G. 4. c. 126.

See the *form of a warrant to apprehend for a pound breach, post,* (Y.) See also *forms of indictments for a rescue of cattle taken damage-feasant, before they were impounded, and for rescuing cattle out of a pound, taken as a distress damage-feasant.* 2 *Chitt. Crim. L.* 203, 204. See also *Cro. Cir. C.* 410. — (Y)

X. Replevying the Distress.

Replevy.

It is worthy of observation how provident the law is, that men's beasts, cattle, or other goods be not unjustly or excessively distrained; and if they be, that deliverance be speedily made of them by replevy (or taking back the pledge); otherwise the husbandry of the realm, and men's other trades, might be overthrown or hindered. 2 *Inst.* 137.

1 & 2 P. & M.

To which purpose it is enacted by stat. 1 & 2 *P. & M. c.* 12. § 3. that the sheriff of every county shall, at his first county day, or in two months after he hath received his patent of office, appoint and proclaim in the shire town four deputies at the least, dwelling not above twelve miles one distant from another, to make replevies; on pain of 5*l.* for every month that he shall lack such deputy or deputies, half to the king, and half to him that shall sue in any court of record.

11 G. 2. c. 19.

And by stat. 11 *G.* 2. *c.* 19. § 23. The *sheriff or other officer,* having authority to grant replevins, shall, in every replevin of a distress for rent, take in his own name from the plaintiff and two sureties, a bond in double the value of the goods distrained, to be ascertained on the oath of one witness not interested in the goods, and conditioned for prosecuting the suit with effect, and without delay, and for duly returning the goods distrained, in case a return shall be awarded, before any deliverance be made of the distress; and the sheriff shall assign such bond *to the avowant, or person making conusance.*

Sheriff or other officer.] In *Richards* v. *Acton,* 2 *Bla. Rep.* 1220. the Court of C. P., on a summary application, made a rule on the sheriff, under-sheriff, and the replevin-clerk, who had refused to discover the names of the pledges taken on granting the replevin, to pay to the defendant in replevin the damages and costs recovered by him.

To the avowant or person making conusance.] *Avowry* is where one takes a distress, and the person distrained sues a replevin;

then he that took the distress must *avow* and justify in his plea, for what cause he took it, if he took it in his own right; and this is called an *avowry;* if he took it in the right of another, then, when he hath shewed the cause, he must make *conusance* of the taking, as bailiff or servant to him in whose right he took it. *Terms of the L.*

And the sheriff having taken bond from the plaintiff in replevin as aforesaid, he ought forthwith to make deliverance of the goods or cattle distrained; and if the distress be drawn into a house or other strong-hold, the sheriff or his bailiff, after demand made for deliverance of the distress, may break open the house to replevy them; for a man's house is privileged by common law only for himself, his family, and his own goods. 2 *Inst.* 140.

XI. Sale of the Distress.

Distress in nature of a pledge. When impounded, the goods were formerly only in the nature of a pledge or security to compel the performance of satisfaction; and upon this account it hath been held (*Cro. Jac.* 148.) that the distrainer is not at liberty to work or use a distrained beast. And thus the law still continues with regard to beasts taken damage feasant, and distresses for suit or services which must remain impounded till the owner makes satisfaction; or contests the right of distraining, by replevying the chattels. 3 *Bla. C.* 13.

Sale of distress for offence presented in leet. Distress taken for an offence presented in the leet may of common right be sold, because it is a court of record; but otherwise it is of distresses in courts that are not of record. 12 *Mod.* 330.

Amercement in court baron. A distress for an amercement in a court baron cannot be sold; but in such case a distress infinite shall go. 1 *Bulst.* 52, 53.

2 W & M. sess. 1. c. 5. In like manner, before stat. 2 *W. & M. sess.* 1. *c.* 5. distress for rent in arrear could not be sold, but only detained till payment of the rent: but by the said statute § 2. it is enacted, that whereas the most ordinary and ready way for recovery of arrears of rent is by distress, yet such distresses not being to be sold, but only detained as pledges for enforcing the payment of such rent, the persons distraining have little benefit thereby; therefore from thenceforth, where any goods shall be distrained (Q) for rent reserved and due upon any demise, lease, or contract whatsoever, and the tenant or owner of the goods distrained shall not, within five days next after such distress taken, and notice (R) thereof, (with the cause of such taking) left at the chief mansion-house, and other most notorious place on the premises, replevy the same; in such case the person distraining shall, with the sheriff or under sheriff of the county, or with the constable of the hundred, parish, or place where such distress shall be taken, cause the goods and chattels so distrained to be appraised by two sworn (S) appraisers (whom such sheriff, under-sheriff, or constable shall swear) to appraise (T) the same truly according to the best of their understanding; and after such appraisement shall sell the same for the best price can be gotten for them, for satisfaction of the rent, and charges of the distress, appraisement and sale; leaving the overplus (if any) with the sheriff, under-sheriff, or constable for the owner's use.

(Q) (R) (S.) (T)

Appraisement. The true construction of stat. 2 *W.* & *M.* sess. 1. *c.* 5. in requiring an appraisement, is, that the value of the goods might be ascertained by a fair estimate made at the time of the distress; and

that, if on such valuation there should not be thought sufficient without them, the landlord might distrain beasts of the plough. Where, therefore, there had been such an appraisement on oath, and no evidence was offered to shew that there was a sufficient distress without taking the beasts of the plough, the Court of Exchequer held, that it was not necessary that the other goods should all have been first disposed of before the latter were sold; unless they were wrongfully taken in the first instance, such sale was not a sufficient ground to support an action on stat. 51 *Hen.* 3. stat. 4. *Jenner* v. *Yolland, T.* 58 *G.* 3. 6 *Price,* 3. The persons chosen as appraisers must be disinterested in the distress, and therefore where the party distraining was chosen one of them, it was held to be bad. *Bull. N. P.* 81.

By stat. 11 *G.* 2. *c.* 19. § 8. The landlord may, in convenient time, appraise, sell, or otherwise dispose of the cattle, &c. (in this sect. allowed to be distrained) towards satisfaction of the rent and charges of distress and sale; the appraisement to be taken thereof when cut, gathered, cured, and made, and not before. *Vide ante,* 871.

11 G. 2. c. 19.

Shall not within five days.] If the goods remain on the premises longer than the five days without the tenant's consent, the distrainer, after the expiration of that time, becomes a trespasser. *Griffin* v. *Scott,* 2 *Str.* 717. 2 *Ld. Raym.* 1424.

And it has been decided, that the five days may be inclusive of the *day* of sale, but must be exclusive of the *time* of it; so that, where the distress was made on the morning of *Saturday* the 12th of *May,* and the sale in the afternoon of *Thursday* the 17th, it was held to be regular, because the five days expired on the morning of the latter day. *Wallace* v. *King,* 1 *H. Blac.* 13.

Under stat. 2 *W.* & *M.* sess. 1. *c.* 5. § 2. and 11 *G.* 2. *c.* 19. § 10. a landlord distraining, may remain more than five days on the premises for the purpose of selling the goods distrained; but it must be left to a jury what is a reasonable time for the purpose. *Pitt* v. *Shew, H.* 1 & 2 *G.* 4. 4 *B.* & *A.* 208.

Goods remaining on premises.

And charges of the distress.] In this case the party distraining is by the very words of the act entitled to deduct the costs of the distress. And such costs are given by several other statutes, in certain cases of warrants of distress; though it seems from the case of *Moyse* v. *Cocksedge, Will.* 636., that such a power is impliedly given in all acts that authorise the levying of a sum of money by a warrant of distress. But to remove all doubts, by stat. 27 *G.* 2. *c.* 20. § 2. in all cases where a justice is empowered by any act then in force or thereafter to be made, to issue a warrant of distress for the levying of any penalty inflicted, or any sum of money directed to be paid by or in consequence of such act, the officer making the distress is empowered to deduct the reasonable charges of taking, keeping, and selling such distress out of the money arising by the sale; returning the overplus, on demand, to the owner of the goods distrained. *Vide* § 1. *post,* p. 867.

27 G. 2. c. 20.

The constable of the hundred, parish, or place where such distress shall be taken.] But where a distress was made for the rent of land, part of which was situate in the hundred of *Kinasley* in *Wiltshire,* and the remainder in the hundred of *Andover,* in the county of *Southampton,* and the two appraisers were sworn only in the hundred and by the constable of *Kinasley,* but in the presence of the constable of *Andover,* it was held to be good; because

the distress was entire, and all the goods being impounded in the hundred of *Kinasley*, the impounding there was but a continuance of the original taking in both the hundreds, and as the goods were all impounded in the hundred of *Kinasley*, the constable of that hundred was the proper officer within the statute. *Walter* v. *Rumball*, 1 *Ld. Raym.* 53. 12 *Mod.* 76. *S. C.* 4 *Mod.* 395.

1 & 2 P. & M. c. 12. Fee for impounding.

By stat. 1 & 2 *P.* & *M. c.* 12. § 2. No person shall take for keeping in pound or impounding any distress above 4*d.* for any one whole distress; and where less hath been used, there to take less; on pain of 5*l.* to the party grieved, besides what he shall take above 4*d.*

57 G. 3. c. 93.

By stat. 57 *G.* 3. *c.* 93. For regulating the costs of distresses levied for payment of small rents, after reciting that "whereas divers persons acting as brokers, and distraining on the goods and chattels of others, or employed in the course of such distresses, have of late made excessive charges, to the great oppression of poor tenants and others; and it is expedient to check such practices;" it is enacted, "that no person whatsoever making any distress for rent, where the sum demanded and due shall not exceed the sum of 20*l.* for and in respect of such rent, nor any person whatsoever employed in any manner in making such distress, or doing any act whatsoever in the course of such distress, or for carrying the same into effect, shall have, take, or receive out of the produce of the goods or chattels distrained upon and sold, or from the tenant distrained on, or from the landlord, or from any other person whatsoever, any other or more costs and charges for and in respect of such distress, or any matter or thing done therein, than such as are fixed and set forth in the schedule hereunto annexed and appropriated to each act which shall have been done in the course of such distress; and no person or persons whatsoever shall make any charge whatsoever for any act, matter, or thing mentioned in the said schedule, unless such act shall have been really done."

No person making any distress for rent, where the sum due shall not exceed 20*l.* to take other charges than mentioned in the schedule annexed;

nor to charge for any act not done.

Party aggrieved by any such practice may apply to a justice of the peace.

§ 2. And "if any person or persons whatsoever shall in any manner levy, take, or receive from any person or persons whatsoever, or retain or take from the produce of any goods sold for the payment of such rent, any other or greater costs and charges than are mentioned and set down in the said schedule, or make any charge whatsoever for any act, matter, or thing mentioned in the said schedule, and not really done, it shall be lawful for the party or parties aggrieved by such practices to apply to any one justice of the peace for the county, city, town, and acting for the division where such distress shall have been made, or in any manner proceeded in, for the redress of his, her, or their grievance so occasioned; whereupon such justice shall summon the person or persons complained of to appear before him at a reasonable time to be fixed in such summons; and such justice shall examine into the matter of such complaint by all legal ways and means, and also hear in like manner the defence of the person or persons complained of; and if it shall appear to such justice that the person or persons complained of shall have levied, taken, received, or had other and greater costs and charges than are mentioned or fixed in the schedule hereunto annexed, or made any charge for any matter or thing mentioned in the said schedule, such act, matter, or thing not having been really done, such justice shall order and adjudge treble the amount of the monies so unlawfully

Justices may adjudge treble the amount of the monies unlawfully taken to be paid with costs, which may be levied by distress.

taken, to be paid by the person or persons so having acted to the party or parties who shall thus have preferred his, her, or their complaint thereof, together with full costs; and in case of non-payment of any monies or costs so ordered and adjudged to be paid, such justice shall forthwith issue his warrant to levy the same by distress and sale of the goods and chattels of the party or parties ordered to pay such monies or costs, rendering the overplus (if any) to the owner or owners, after the payment of the charges of such distress and sale; and in case no sufficient distress can be had, such justice shall, by warrant under his hand, commit the party or parties to the common gaol or prison within the limits of the jurisdiction of such justice, there to remain until such order or judgment be satisfied."

57 G.3. c.93.

§ 3. And "it shall be lawful for such justice, at the request of the party complaining or complained against, to summon all persons as witnesses, and to administer an oath to them, touching the matter of such complaint or defence against it; and if any person or persons so summoned shall not obey such summons, without any reasonable or lawful excuse, or refuse to be examined upon oath, or if a quaker upon solemn affirmation, then every such person so offending shall forfeit and pay a sum not exceeding 40*s.* to be ordered, levied, and paid in such manner and by such means, and with such power of commitment, as is hereinbefore directed as to such order and judgment to be given between the party or parties in the original complaint, excepting so far as regards the form of the order, and hereinafter provided for."

Justices may summon witnesses.

Penalty

§ 4. And "it shall be lawful for such justice, if he shall find that the complaint of the party or parties aggrieved is not well founded, to order and adjudge costs not exceeding 20*s.* to be paid to the party or parties complained against, which order shall be carried into effect, and levied and paid in such manner, and with like power of commitment, as is hereinbefore directed as to the order and judgment founded on such original complaint: provided always, that nothing herein contained shall empower such justice to make any order or judgment against the landlord for whose benefit any such distress shall have been made, unless such landlord shall have personally levied such distress: provided always, that no person or persons who shall be aggrieved by any distress for rent, or by any proceedings had in the course thereof, or by any costs and charges levied upon them in respect of the same, shall be barred from any legal or other suit or remedy which he, she, or they might have had before the passing of this act, excepting so far as any complaint to be preferred by virtue of this act shall have been determined by the order and judgment of the justice before whom it shall have been heard and determined; and which order and judgment shall and may be given in evidence, under the plea of the general issue, in all cases where the matter of such complaint shall be made the subject of any action."

If complaint unfounded, justice may give costs to the party complained against.

No judgment to be given against any landlord, unless he personally levies the distress.

Parties not to be barred of other legal remedies.

§ 5. And "such orders and judgments on such complaints shall be made in the form in the schedule hereunto annexed, and may be proved before any court by proof of the signature of the justice to such order and judgment; and such orders as regard persons who may have been summoned as witnesses shall be made in such form as to such justice shall seem most fit and convenient."

Signature of the justice proof of judgment.

57 G. 3. c. 93.
Brokers to give copies of their charges to the persons distrained.

§ 6. And "every broker or other person who shall make and levy any distress whatsoever shall give a copy of his charges, and of all the costs and charges of any distress whatsoever, signed by him, to the person or persons on whose goods and chattels any distress shall be levied, although the amount of the rent demanded shall exceed the sum of 20*l*."

Printed copy of act to be hung up in sessions house.

§ 7. And "a fair printed copy of this act shall be hung up in some convenient place in such halls or rooms where the justices of each and every county in *England* and *Wales* shall hold either their quarter or other sessions."

Schedule referred to in Stat. 57 *G.* 3. *c.* 93.

Form of the Order and Judgment of the Justice before whom Complaint is preferred, where the Order and Judgment is for the Complainant.

IN the matter of the complaint of A. B. *against* C. D. *for a breach of the provisions of an act of the fifty-seventh year of his majesty king* George *the third, intituled* An act [here insert the title of this act,] *I,* E. F. *a justice of the peace for the county of* ———, *and acting within the division of* ———, *do order and adjudge that the said* C. D. *shall pay to* A. B. *the sum of* ———, *as a compensation and satisfaction for unlawful charges and costs levied and taken from the said* A. B. *under a distress for rent; and the further sum of* ——— *for costs on this complaint.*
(Signed) E. F.

Form of the Order and Judgment of the Justice where he dismisses the Complaint as unfounded, and with or without Costs, as the Case may be.

IN the matter of the complaint of A. B. *against* C. D. *for the breach of the provisions of an act of the fifty-seventh year of his majesty king* George *the third, intituled* An act [here insert the title of this act,] *I,* E. F. *a justice of the peace for the county of* ———, *and acting within the division of* ———, *do order and adjudge that the complaint of the said* A. B. *is unfounded* [if costs are given,] *and I do further order and adjudge, that the said* A. B. *shall pay unto the said* C. D. *the sum of* ——— *for costs.*
(Signed) E. F.

Schedule of the Limitation of Costs and Charges on Distresses for Small Rents.

	£	s.	d.
Levying distress - - - - -	0	3	0
Man in possession, *per* day - - -	0	2	6
Appraisement, whether by one broker or more, sixpence in the pound on the value of the goods			
Stamp, the lawful amount thereof			
All expences of advertisements, if any such -	0	10	0
Catalogues, sale and commission, and delivery of goods, one shilling in the pound on the net produce of the sale.			

XII. Irregularity in the Proceedings.

By stat. 11 *G.* 2. *c.* 19. § 19. Where any distress shall be made for any kind of rent justly due, and any irregularity shall be afterwards done by the party distraining, or his agent, the distress itself shall not be therefore deemed unlawful, nor the distrainer a trespasser *ab initio*, but the party aggrieved may recover satisfaction for the special damage in an action of trespass or on the case at the election of the plaintiff; and if he recover, he shall have full costs. *Bradby*, 267.

11 G. 2. c. 19. Irregularity.

§ 20. But no tenant shall recover on such action, if tender of amends hath been made before the action brought.

XIII. Landlord re-entering on Non-payment.

By stat. 4 *G.* 2. *c.* 28. § 2, 3, 4. In case where an half year's rent shall be in arrear, and the landlord or lessor hath right by law to re-enter for non-payment thereof, he may, without any formal demand or re-entry, serve a declaration in ejectment (the statute here contains a direction as to the mode of proceeding in certain particular cases): and on recovering judgment and execution without payment of rent and arrears together with full costs, and without bill filed within six months after execution, shall hold the premises discharged from the lease. But this not to bar the right of any mortgagee, provided the mortgagee within six months after judgment and execution executed, pay all rent in arrear, and costs and damages, and perform the lessee's covenants. And if the defendant file a bill in equity, he shall not have an injunction against the proceedings at law, unless he shall bring the arrears into court, and also the costs taxed in the said suit. Provided, that if the tenant shall before the trial in ejectment pay or tender to the lessor, or pay into court all the arrears and costs, the proceedings on the ejectment shall thenceforth cease.

4 G. 2. c. 28. Re-entering.

XIV. Case of Tenant holding over.

By stat. 8 *Ann. c.* 14. § 6, 7. Whereas tenants *pur autre vie* (that is, holding during the life of another person), and lessees for years, or at will, frequently hold over after the determination of the lease: and whereas after the determination of such or any other leases no distress can be made for arrears of rent that grew due on such leases before the determination thereof; it is therefore enacted that it shall be lawful to distrain after the determination of such lease, in the same manner as if it had not been determined: provided that the distress be made within six calendar months after the determination of the lease, and during the continuance of such landlord's title or interest, and during the possession of the tenant from whom such arrears became due.

8 Ann. c. 14. Tenant holding over after the term is expired.

And by stat. 4. *G.* 2. *c.* 28. § 1. If any tenant for life or years or other person who shall come into possession by, from, or under or by collusion with him shall wilfully hold over any lands, after the determination of such term, and after demand made, and notice in writing given for delivering the possession thereof; he shall, for the time that he shall so hold over, pay at the rate of

4 G. 2. c. 28. And after having received notice to quit, to pay double value.

4 G. 2. c. 28. *double the yearly value* thereof, to be recovered by action of debt in any court of record.

After the determination of such term, and after demand made, and notice in writing given.] Notwithstanding the order in which the words are placed in the act of parliament, it has been decided, that the notice to quit may be given *before* the expiration of the lease or time of demise, or *after*. *Cutting* v. *Derby*, 2 *Blac. Rep.* 1075.

Dagget v. *Snowdon*, in C. P. 2 *Blac. Rep.* 1224. *Ejectment*, On the 5th of *October* 1769, the plaintiff agreed to let to defendant a farm, to hold the arable ground from old *Candlemas* then next, the pasture from old *Lady-day*, and the meadow from old *May-day*, for seven years, paying rent half yearly at old *Michaelmas* and *Lady-day*. In *September* 1777, the plaintiff gave the defendant a written notice to quit the arable land at old *Candlemas* next, the pasture at old *Lady-day*, and the meadow ground at old *May-day*. A question arose, Whether this notice were sufficient to entitle the plaintiff to recover the whole or any part of the premises? For the defendant it was argued, that this was not a sufficient notice for any part, the whole being one entire tenancy; and therefore notice to quit ought to have been given on the 13th of *August*, being six months previous to the time when the first part of the term expired. But by the Court; the notice was sufficient for the whole. It was settled by all the judges about ten years ago, to avoid diversity of opinions, and for general convenience, that in tenancies from year to year (which these kinds of holding over are held to be) there must be six months' notice on either side to quit according to the ancient law; except where any special agreement, or the custom of any particular places, intervenes. The true construction of this agreement is, that it is a holding from *Lady-day* to *Lady-day*, the rent being payable at *Michaelmas* and *Lady-day*. And though part of the farm is to be entered upon and quitted at old *Candlemas*, and other part not till old *May day*, yet this is no more than the custom of most countries would have directed, without any special words for that purpose, in a taking from old *Lady-day*.

The rule of construction laid down in the preceding case of *Doe* v. *Snowdon*, was recognised and adopted in *Doe* v. *Spence*, 6 *East.* 120., where under an agreement, by a tenant of a farm, to enter on the tillage land at *Candlemas*, and on the house and other premises at *Lady-day* following; and that, when he left the farm, he should quit the same according to the times of entry as aforesaid, and the rent, which was an entire rent for all the premises demised, was reserved half yearly at *Michaelmas* and *Lady-day*: it was holden, that a notice to quit, delivered half a year before *Lady-day*, but less than half a year before *Candlemas*, was good. 2 *Selw. N. P.* 1671. *et vide Doe* v. *Watkins*, 7 *East.* 551.

Messenger v. *Armstrong*, 1 *T. R.* 53. Action for double rent: Ld. *Mansfield* said, Where a term is to end on a precise day, there is no occasion for notice to quit, because both parties are apprised that unless they come to a fresh agreement there is an end of the lease. Here it ended at *Whitsuntide*; the landlord before the time expired told the tenant, "you know you are to quit;" the meaning of that is, "If you do not quit, I will insist on my double rent." And he gave him a second notice afterwards, wherein he said in so many express words what was before

to be collected by intendment. See *Doe* d. *Digby* v. *Steel*, 3 *Campb.* 117.

4 G. 2. c. 28.

But after all, this remedy by action seemeth not altogether adequate to the evil: for three reasons. 1. Because such action is certainly tedious and expensive. 2. It is uncertain, when the action is over, whether the tenant will be able to pay. 3. What is chiefly wanted, namely putting the landlord into possession, is not obtained by such action, but for that he shall be still to seek. A more short and easy method of ousting the tenant of his possession seemeth more eligible in the like cases.

11 G. 2. c. 19. Tenant holding over after having given notice to quit, to pay double rent.

By stat. 11 *G.* 2. *c.* 19. § 18. Whereas great inconveniences have happened to landlords, whose tenants have power to determine their leases by giving notice to quit the premises, and yet refusing to deliver up the possession when the landlord hath agreed with another tenant for the same; it is therefore enacted, that if any tenant shall give notice of his intention to quit the premises at a time mentioned in such notice, and shall not accordingly deliver up the possession at the time in such notice contained, he, his executors or administrators, shall from thenceforward pay *double rent*, during all the time he shall so continue in possession, to be recovered in like manner as the single rent.

Parol notice.

Upon this statute it has been determined, that whether the tenant hold under a lease or a parol demise, it is equally within its provision; and that it is immaterial, whether the tenant's notice be in writing or by parol. *Timmins* v. *Rowlison*, 1 *Blac. Rep.* 533. But if the landlord accept the single rent after the tenant has given notice, and hold over, it is a waver of his claim to the double rent, given by the statute. *Doe* v. *Batten*, 1 *Cowp.* 243.

A notice to quit *as soon as he can get another situation*, is too vague to entitle the landlord to double rent under stat. 11 *G.* 2. *c.* 19. § 18. Although the tenant quit the premises and underlet them. *Farrance* v. *Elkington*, 2 *Campb.* 593.

But this remedy, in like manner as the former, seemeth not apposite to the main purpose. The statute proceeds upon a supposition that the tenant is a man of substance; which probably may not be the case. It is most likely that if he were able to live elsewhere, he would not chuse to hold over under such circumstances, nor perhaps would the landlord want to be rid of him. The putting him out of possession, by some expeditious and easy method, seemeth the more adequate remedy in this case also, in like manner as is provided in the case where the tenant deserteth the premises, as hereafter followeth.

Tenant from year to year is to have half a year's notice to

In the case of *Right* v. *Darby* and another, 1 *T. R.* 159., Ld. *Mansfield* said, that when a lease is determinable on a certain event, or at a particular period, no notice to quit is necessary, because both parties are equally apprised of the determination of the term. But if there be a lease for a year, and by consent of both parties the tenant continue in possession afterwards, the law implies a tacit renovation of the contract. They are supposed to have renewed the old contract which was to hold for a year; and in that case it is necessary, for the sake of convenience, that if either party should be inclined to change his mind, he should give the other half a year's notice before the expiration of the next, or any following year.

It must be half a year's notice, that is, reckoning from one feast day to another; six months' notice (*e. g.* a notice on the 26th of *March* to quit on the 29th of *September*), is insufficient. *S. C.*

And when rent is reserved quarterly, it does not dispense with the regular notice to quit required by law, but is merely a collateral matter; and such notice is half a year's, and not six months' notice. 1 *Esp.* 266.

Whatever doubts may have been entertained, it is now settled that in the case of a tenancy from year to year as long as both parties please, if the tenant die intestate, his administrator has the same interest in the land which his intestate had; for such tenancy is a chattel interest, and whatever chattel the intestate had must vest in his administrator, as his legal representative, therefore, half a year's notice must be given to the representative, whether executor or administrator, of a yearly tenant deceased, or an ejectment will not lie. 3 *T. R.* 13. 6 *T: R.* 298.

And there is no distinction between houses and lands as to the time of giving notice to quit. 3 *T. R.* 16. 3 *Wils.* 25.

Notice to quit ought to be in writing; and it should be certain and clear, and not optional or ambiguous. 1 *Dougl.* 176.

If a tenant from year to year hold from old *Michaelmas*, a notice to quit *at Michaelmas generally*, is good. *Doe* d. *Hinde* v. *Vince*, 2 *Campb.* 256.

A notice to quit on the 25th *March*, or the 8th of *April*, was held sufficient by Ld. *Kenyon* C. J. in *Doe* d. *Matthewson* v. *Wrightman*, 4 *Esp.* 5.

But where there is any doubt as to the time at which a tenancy commenced, the most eligible seems to be "*to quit at the expiration of the current year of the tenancy which shall expire next after the end of one half-year from the service of the notice.*" 2 *Camp.* 258. (*n.*)

Ejectment — Evidence that the entry was at *Candlemas*, and *Lady-day;* namely, into the meadow lands at *Candlemas*, and ploughed lands at *Lady-day*. The notice was to quit at *Lady-day*. Ld. *Kenyon* C. J. held that the notice to quit must be given half a year prior to the first entry. Plaintiff nonsuited. *Denn* v. *Pointer*, *Stafford Sum. Ass.* 1797. *M. S.*

And as the tenant is entitled to notice, so also is the landlord, if the tenant be desirous to quit.

Receiving rent after notice is a waver thereof.

But in the case of *Goodright* v. *Cordwent*, 6 *T. R.* 219. it was determined, that if a landlord receive rent due after the expiration of the notice to quit, it is a waver of that notice. In this case, the landlord gave the tenant notice to quit at old *Michaelmas* 1792, and afterwards received a half-year's rent due on 5th *April* 1793.

Such mere acceptance of rent, however, is not absolutely a waver, but is matter of evidence only as to the meaning of the parties at the time, to be left to the jury under the circumstances of the case. 1 *Cowp.* 295.

But a distress taken for rent accrued after the expiration of a notice to quit, is a waver of that notice; for though in the mere acceptance of rent the *quo animo* is to be left to the jury (for the acceptance of money is equivocal, it may be in satisfaction for a trespass, or it may be for rent), yet a distress is an act not to be qualified, and amounts to a confirmation of the tenancy. 1 *H. Blac.* 311.

See stat. 1 *G.* 4. *c.* 87. "for enabling landlords more speedily to recover possession of lands and tenements unlawfully held over by tenants; and *Doe* v. *Roe*, 5 *B.* & *A.* 766.

1 G. 4. c. 87.

XV. Attorning to Strangers.

By stat. 11 *G.* 2. *c.* 19. § 11. Whereas the possession of estates is rendered precarious by tenants attorning to strangers, it is enacted, that all such attornment shall be void; unless the same be made pursuant to some judgment at law or decree in equity, or be with the consent of the landlord, or be to a mortgagee after the mortgage is become forfeited.

11 G. 2. c. 19. Attorning to strangers.

§ 12, 13. Tenants to whom any declaration in ejectment shall be delivered shall forthwith give notice thereof to the landlord; on pain of forfeiting to him the value of three years' improved or rack rent; and the landlord may make himself defendant by joining with the tenant, or may appear by himself.

And if the tenant shall not give notice to the landlord, and the plaintiff shall obtain judgment against him by default, the court, on application, will set aside the judgment, and order the tenant to pay the costs. 3 *Burr.* 1996.

XVI. Deserting the Premises.

By stat. 11 *G.* 2. *c.* 19. § 16. If any tenant at rack rent, or where the rent reserved shall be full three-fourths of the yearly value of the demised premises, who shall be in arrear for one year's rent, shall desert the premises, and leave the same uncultivated or unoccupied, so as no sufficient distress can be had; two justices (having no interest in the premises) may, at the request (U) of the lessor or landlord, or his bailiff or receiver, go upon and view the same, and affix on the most notorious part of the premises notice (W) in writing what day (at the distance of fourteen days at the least) they will return to take a second view; and if on such second view the tenant, or some person on his behalf, shall not appear and pay the rent, or there shall not be sufficient distress on the premises, then the said justices may put the landlord or lessor into possession, and the lease to such tenant, as to such demise, shall from thence be void.

11 G. 2. c. 19. Tenant deserting. Year's rent in arrear.

(U)

(W)

§ 17. But the tenant may appeal to the next justice or justices of assize; if in *London* to the court of K. B. or C. P.; if in the counties palatine of *Chester*, *Lancaster*, or *Durham*, then to the judges thereof; if in *Wales*, then to the courts of grand sessions; who are empowered to order restitution to the tenant, with costs, to be paid by the landlord, if they see cause for the same; but if they affirm the act of the justices, they may award costs not exceeding 5*l.* for the frivolous appeal.

And the justices in this, and all other the like cases, ought to make a record (X) of the whole proceedings, to be produced afterwards in case of an action brought against the landlord by such tenant. For the justices are not to carry witnesses with them about the country, to testify what they shall act as judges of record; nor doth it seem requisite that they should go and testify in a court upon their oaths what they should have acted in such cases; but to make a record in writing under their hands and

(X)

seals, of all that hath been done; which record being produced in court, seemeth to be the proper evidence in all such cases, for that the law reposeth an intire confidence therein, and it shall not be gainsaid; otherwise there would be no end of things.

57 G. 3. c. 52. Half year's rent in arrear.

By stat. 57 *G.* 3. *c.* 52. The provisions of this statute are extended to tenants who shall be in arrear one half year's rent, and who shall hold the lands under any demise or agreement, whether written or verbal, and although no right or power of re-entry be reserved or given to the landlord in case of non-payment of rent.

Where a tenant ceased to reside on the premises for several months, and left them without any furniture, or sufficient other property to answer the year's rent, it was held that the landlord might properly proceed under stat. 11 *G.* 2. *c.* 19. § 16. to recover the premises, although he knew where the tenant then was, and although the justices found a servant of the tenant upon the premises, when they first went to view the same. *Ex parte Pilton*, 1 *B. & A.* 369.

XVII. Rent in Case of an Extent or Execution.

Extent or execution.

In *R.* v. *Cotton*, *T.* 1755. *Park.* 112. It was determined by the barons of the exchequer, and affirmed on a writ of error, that if a distress be made for rent, and before the five days given by act of parliament are expired, an extent is issued, though it be not levied, for a debt due to the crown, the extent shall take place of the distress, because the distrainer neither gains a general nor a special property, nor even the possession of the cattle or things distrained. The distress is only a pledge in his hands for the rent. But the extent binds the property of the goods of the king's debtor from the teste of it.

8 Ann c. 14. Arrears of rent to be first paid not exceeding one year's rent.

But by stat. 8 *Ann.* *c.* 14. § 1. No goods being on any messuage, lands, or tenements, leased for life, term of years, at will, or otherwise, shall be liable to be taken by execution, unless the party, at whose suit the execution is sued out, shall, before the removal of such goods from off the premises, pay to the landlord or his bailiff all such rent as shall be then due for the premises, provided that it amount not to more than one year's rent; and if the said arrears shall exceed one year's rent, then the party paying such landlord one year's rent may proceed to execute his judgment.

And in case of two executions, there shall not be two years' rent paid to the landlord: for the intent of the act was to reserve to the landlord only the rent for one year, and it was his own fault if he let more run in arrear. Therefore one year's rent to the landlord being paid to him on the first execution, the sheriff is not to levy for him again any thing on a subsequent execution. 2 *Str.* 1024.

Though in the case of the tenant's becoming bankrupt a landlord may distrain for his rent upon the bankrupt's goods, either before or after the assignment under the commission, yet if he neglect to do so, and suffer the goods to be sold by the assignees, he can only come in for his rent *pro ratâ* with the other creditors. *Anon.* 1 *Atk.* 102.; and *ex parte Descharmes*, *ib.* 103.

So in the case *ex parte Devismes*, *Jan.* 1776., where the question was, whether the landlord was entitled to have a year's rent paid to him out of the effects of a bankrupt (his tenant), such effects having been seized under the commission, and removed by the messenger from the demised premises in respect of which the

rent was in arrear. Lord Chancellor *Bathurst* was clearly of opinion, upon the authority of the two cases from 1 *Atk.* (*supra*) that the landlord could only come in as a common creditor. And he added, that if the legislature had intended to prefer the landlord, they would have done so under the statute of *Anne*, as they did in the insolvent debtor's act. *MS. Vide Cooke's B.L.* 191. *6th edit.*

8 Ann. c.14.

The landlord has no lien upon the goods after they are removed from the premises. *Bradyll* v. *Ball*, 1 *Bro.* 427. *Cooke's B. L.* 192. *6th edit.*

Arnitt v. *Garnett*, *H.* 1 *G.* 4. 3 *B. & A.* 440. Under stat. 8 *Ann.* c. 14. the sheriff is bound to retain one year's rent out of the proceeds of the tenant's goods taken in execution, provided he has notice of the landlord's claim, at any time while the goods or the proceeds remain in his hands; and the court, upon motion, ordered the same to be paid to the landlord, even where the notice was given after the removal of the goods from the premises.

XVIII. Rent on Death of Tenant for Life.

11 G.2. c.19. Rent on the death of tenant for life.

By stat. 11 *G.* 2. *c.* 19. § 15. Whereas where any lessor or landlord, having only an estate for life in the lands, tenements, or hereditaments demised, happens to die before or on the day on which any rent is reserved or made payable, such rent or any part thereof is not by law recoverable by the executors or administrators of such lessor or landlord; nor is the person in reversion entitled thereto, other than for the use and occupation from the death of the tenant for life; of which advantage hath often been taken by the under-tenants, who thereby avoid paying any thing for the same ; for remedy thereof, it is enacted, that where any tenant for life shall happen to die before or on the day on which any rent was reserved or made payable, upon any demise or lease of any lands, tenements, or hereditaments, which determined on the death of such tenant for life, the executors or administrators of such tenant for life may, in an action on the case, recover of such under-tenant, if such tenant for life die on the day on which the same was made payable, the whole, or if before such day, then a proportion of such rent, according to the time such tenant for life lived of the last year, or quarter of a year, or other time in which the said rent was growing due.

Upon the death of tenant in tail, the rent shall be apportioned.

In *Pagett* v. *Gee*, *Dec.* 4. 1753, *MS.* (B), and *Amb.* 198. Tenant in tail, remainder to the defendant in fee, leases for years, and dies without issue a week before the day of payment of the half year's rent. The lessee, at the day, pays all the half year's rent to the defendant. The executor of the tenant in tail brings his bill for apportionment of the rent.—By the Ld. Chancellor *Hardwicke*: This point has never been determined: but this is so strong a case, that I shall make it a precedent. There are in it two grounds for relief in equity. The first arises on the statute of the 11 *G.* 2. The second arises on the tenant's having submitted to pay the rent to the defendant.—The relief arising upon the statute is either from the strict legal construction or equity formed upon the reason of it. And here it is proper to consider what the mischief was before the act, and what remedy is provided at common law. If tenant for life, or any who had a determinable estate, died but a day before the rent reserved on a lease of

Pagett v. Gee. his became due, the rent was lost. For no one was entitled to recover it. His representatives could not, because they could only bring an action for the use and occupation; and that would not lie where there was a lease, but debt or covenant. Nor could the remainder-man; because it did not accrue in his time. Now this act appoints the apportioning the rent, and gives the remedy. But there are two descriptions of the persons, to whose executors the remedy is given. In the preamble, it is one having only an estate for life. In the enacting part, it is, tenant for life. Now tenant in tail comes expressly within the mischief. I do not know how the judges at common law would construe it; but I should be inclined in this court to extend it to them. I should make no doubt were this the case of tenant in tail after possibility of issue extinct; for he is considered in many respects as tenant for life only. He cannot suffer a recovery. He may be injoined from committing waste of trees growing for ornament or shelter, though not from committing common waste. Were it the case of tenant for years determinable on lives, he certainly must be included within the act, though it says only tenant for life: it would be playing with the words to say otherwise. These cases shew the necessity of construing this act beyond the words. Tenant in tail has certainly a larger estate than a mere tenant for life; for he has the inheritance in him, and may when he pleases turn it into a fee: but if he does not, at the instant of his death he has but an interest for life. Such too is the case of a wife tenant in tail *ex provisione mariti.* Upon this point I give no absolute opinion. As to the equity arising from this statute, I know no better rule than this, *equitas sequitur legem.*— But I ground my opinion in this case upon the tenant's having submitted to pay the rent. He has held himself bound in conscience to pay it, for the use and occupation of the land the last half year. He paid it to the defendant, which he was not bound to do in law. And in such a case, the persons he pays it to shall be accountable, and considered as receiving it for those who are in equity entitled to it. The division must be that prescribed by the statute; and then the plaintiff is entitled to such a proportion of the rent as accrued during the testator's life. And accordingly it was decreed.

The authority of this case has been strongly impugned by the late Sir *W. D. Evans* in his Collection of Statutes, Part IV. Class XIX. No. XXIII. p. 176, note (1) 2*d Edit.* and again by Mr. *Swanston* in his notes to Ex parte *Smyth*, 1 *Swanst. R.* 341.

XIX. Rent how far recoverable by Executors or Administrators.

32 H. 8. c. 37. Rent recoverable by executors or administrators.

By stat. 32 *H.* 8. *c.* 37. § 1. Forasmuch as by the order of the common law the executors or administrators of tenants in fee simple, fee tail, and for term of life, of rent services, rent charges, rent secks, and fee farms, have no remedy to recover such arrearages of the said rents or fee farms as were due to their testators in their lives, nor yet the heirs of such testator, nor any person having the reversion of his estate after his decease, may distrain or have action to levy the same, it is enacted, that the executors and administrators of every such person to whom any such rent or fee farm shall be due and not paid at the time of his death, may have an action of debt for the same against the tenant who ought

to have paid the same, or against his executors and administrators; or may distrain upon the premises, so long as they continue in the possession of such tenant in demesne, who ought immediately to have paid the same to the testator in his life, or of any other person claiming the same only by and from such tenant by purchase, gift, or descent.

32 H. 8. c. 37.

§ 3. In like manner the husband may have action, or distrain for arrears due in the life-time and in the right of his wife.

§ 4. And if any person shall have any rents or fee farms for the life of any other person, which shall be behind and unpaid at the death of such other person, he, his executors or administrators, may have action of debt against the tenant in demesne that ought to have paid the same when it was first due, his executors or administrators, or may distrain for the same upon the premises in such like manner as he might have done if the person by whose death the estate was determined had been in full life.

Note, *Fee farm* is, when the lord upon the creation of the tenancy, reserves to himself and his heirs either the rent for which it was before let to farm, or at least a fourth part of the value; without homage, fealty, or other services, beyond what are especially comprised in the feoffment; and it is called a fee farm rent, because a farm rent is reserved upon a grant in fee. 2 *Inst.* 44.

Fee farm, what is.

XX. Of Distress by Warrant of Justices of the Peace.

It had before been solemnly resolved that these words in an act of parliament, "to be levied by distress," must be understood of "distress and sale." 1 *Salk.* 379. *Carth.* 502. 1 Ld. *Raym.* 583. 6 *Mod.* 83. And

By stat. 27 *G.* 2. *c.* 20. It is enacted, § 1. that in all cases where any justice of the peace is, or shall be, required or impowered by any act of parliament, to issue a warrant of distress for the levying of any penalty inflicted, or any sum of money directed to be paid by or in consequence of such act, it shall be lawful for the justice granting such warrant therein to order and direct the goods and chattels so to be distrained to be sold and disposed of within a certain time to be limited in such warrant, so as such time be not less than four days, nor more than eight days, unless the penalty or sum of money for which such distress shall be made, together with the reasonable charges of taking and keeping such distress, be sooner paid.

27 G. 2. c. 20. Justices to limit in warrants of distress the time for sale.

Not less than four, nor more than eight days.

Levying any penalty.] In cases of distress for the levying of penalties there seems to be no power to break open doors or gates, in case they are locked up or shut, unless such penalty or part thereof be given to the king; which matter may seem to require some consideration. See 2 *Hawk.* *c.* 14. § 5. *ante*, p. 220.

Breaking open doors, &c.

And by 27 *G.* 2. *c.* 20. § 2. The officer making such distress shall and may deduct the reasonable charges of taking, keeping, and selling such distress out of the money arising by such sale; and the overplus (if any, after such charges, and also the said penalty or sum of money, shall be satisfied and paid) shall be returned on demand to the owner of the goods and chattels so distrained; and the officer executing such warrant, if required, shall show the same to the person whose goods and chattels are distrained, and shall suffer a copy thereof to be taken.

Officer to deduct charges of taking, keeping, and selling.

27 G. 2. c. 20. Quakers excepted.

§ 3. But this shall not extend to alter any provisions relating to distresses to be made for the payment of tithes and church rates by the people called quakers, contained in stats. 7 & 8 *W. c.* 34. and 1 *G.* 1. *st.* 2. *c.* 6.

No replevin lies.

Order and direct the goods to be sold.] And in this case no replevin lies. 1 *Barnardist*, 110. 2 *Str.* 1184. 6 *Bac. Abr.* 55. *Willes*, 672. n. (*b.*) *Bull. N. P.* 53. See Vol. II. p. 589.

But where the plaintiff brought replevin for goods levied under a warrant of distress, for an assessment made by a special sessions under the highway act (13 *G.* 3. *c.* 78. § 45. Vide Vol. II. p. 871,) on the ground of the premises, for which he was assessed, being situated without the township which was liable to repair the road; the Court of C. P. refused to set aside the proceedings. *Fenton* v. *Boyle*, 2 *N. R.* 399.

Charges.

Officers may deduct the reasonable charges.] But here is no power given to the justices to ascertain such charges; therefore it seemeth that the officer executing the warrant shall be the sole judge thereof in the first instance, and afterwards, if the owner of the goods distrained shall be dissatisfied, the reasonableness thereof shall be determined by a judge and jury upon an action brought.

But by special statutes, this power of ascertaining the charges of distress and sale is sometimes given to the justices, as is set forth in this book under the respective titles.

Quaker's tithes and church rates.

Tithes and church rates by the people called quakers.] The abovementioned statutes of the 7 & 8 *W. c.* 34. and 1 *G.* 1. *st.* 2. *c.* 6. relate not only to *tithes and church rates* (by which last seemeth only to be understood the churchwardens' rate for the repair and other uses of the church), but also to any customary or other rates, dues, or payments, belonging to any church or chapel, which of right by law and custom ought to be paid for the stipend or maintenance of any minister or curate officiating in any church or chapel. Therefore, for any thing that appears from the words of this statute, unless it be in the case of *tithes* or *church rates*, the justices may order the distress for those other dues and payments to be detained for a certain time, and the officer may deduct the charges not only of *distraining*, but also of *keeping* and *selling* the distress; whereas by those former acts above mentioned, the officer was only allowed to deduct the necessary charges of *distraining*.

33 G. 3. c. 55. Where distress cannot be found in the jurisdiction of the justices granting warrants, it may be levied in any other place.

By stat. 33 *G.* 3. *c.* 55. § 3. reciting "And whereas warrants of distress granted by justices of the peace are sometimes ineffectual, by reason of the goods and chattels of the persons against whom such warrants are granted, being out of the jurisdiction of the justice granting the same," it is enacted, that in all cases where any penalty, forfeiture, fine, or other money may by warrant of any justice of the peace be directed to be levied by distress and sale of the goods and chattels of any person, if sufficient distress cannot be found within the limits of the jurisdiction of such justice, on oath thereof made by one witness before any justice of any other county or place (which oath shall be by him certified by indorsement on such warrant), such penalty, forfeiture, fine, or other money, or so much thereof as may not have been before levied or paid, shall and may, by virtue of such warrant and indorsement, be levied by the person to whom such warrant was originally directed, by distress and sale of the goods and chattels of

such person in such other county or place; to be applied in like manner as if sufficient distress had been found within the jurisdiction of the magistrate originally granting such warrant; and if no such distress can be found, such offender shall be proceeded against according to law.

33 G. 3. c. 55. If no distress found, offender to be proceeded against according to law.

Provided that no justice who shall indorse any certificate upon, or authorise the execution of any such warrant of distress which may not have been granted within his jurisdiction, shall be answerable for any irregularity which may have been committed in or about the obtaining or granting of such warrant.

Backing magistrate not answerable for irregularity.

A warrant of distress, granted by two justices under stat. 9 *G.* 2. *c.* 23., which refers to stat. 12 *C.* 2. *c.* 24. § 45., on a conviction for selling spirituous liquors without a licence, need not be *under the seals* of the justices; it is sufficient if it be *under their hands. Willes*, 411. See Vol. V. tit. Warrant, p. 582.

Warrant under seal.

By stat. 5 *G.* 4. *c.* 18. Intituled "*An act for the more effectual recovery of penalties before justices and magistrates on conviction of offenders; and for facilitating the execution of warrants by constables,*" reciting that, by several acts, certain penalties and forfeitures are imposed on persons for offences committed against the directions of such acts, which are directed to be recovered before any justice or justices of the peace, or any magistrate or magistrates, within their respective jurisdictions; and on non-payment thereof, such penalties and forfeitures, together with the reasonable costs and charges attending the several convictions, are directed to be levied by distress and sale of the goods and chattels of the offender or offenders, by warrant under the hand and seal of such justice and magistrate respectively: and whereas no power is given to such justices and magistrates, on conviction of such offenders, to detain him, her, or them in custody till return is made to the warrant of distress, for the purpose of ascertaining whether such offenders have any goods and chattels to satisfy such penalties, forfeitures, costs, and charges, whereby such offenders frequently escape any punishment for their offences:" it is enacted, that from and after the passing of this act (31 *March* 1824), whenever any penalty or forfeiture is or shall be directed to be recovered before any justice or justices of the peace, or magistrate or magistrates for any county, riding, soke, city, division, or place, and such justice or justices of the peace, magistrate or magistrates, is or are authorized and empowered, on the conviction of the offender or offenders, in default of payment of such penalty or forfeiture, together with the reasonable costs and charges attending such conviction, to cause the same to be levied by distress and sale of the goods and chattels of the offender or offenders, by warrant or warrants under the hand and seal of such justice or magistrate, or hands and seals of such justices or magistrates, together with the reasonable costs of such distress and sale; and in case upon a valuation being taken of the goods and chattels of the offender or offenders, sufficient distress for the payment of all such penalties and forfeitures and other costs and charges cannot be found, or in case it shall appear to such justice or justices, magistrate or magistrates, either by the confession of the offender or offenders or otherwise, that the offender or offenders has or have not sufficient goods or chattels whereupon the same may be levied, within the jurisdiction of such justice or justices,

5 G. 4. c. 18.

When a penalty is directed to be recovered before a justice, on default of payment justice may distrain on the offender's goods.

In default of sufficient distress no sale of goods shall take place, but offender may be committed, unless security be given, &c.

5 G. 4. c. 18.

magistrate or magistrates, no sale shall take place of the goods and chattels of such offender or offenders, but it shall be lawful for such justice or justices, magistrate or magistrates, to commit such offender or offenders to the common gaol or house of correction, for such time and in such manner as in such acts respectively mentioned and directed; then and in every such case it shall and may be lawful to and for such justice or justices, magistrate or magistrates, at his or their discretion, to order the offender or offenders so convicted to be kept and detained in safe custody until return shall be made to such warrant or warrants of distress, unless such offender or offenders shall give sufficient security, to the satisfaction of such justice or justices, magistrate or magistrates, for his, her, or their appearance before him or them on such day or days as shall be appointed for the return of such warrant or warrants of distress, such day or days not being more than 8 days from the time of taking such security; and such security such justice or justices, magistrate or magistrates, is and are hereby empowered to take by way of recognizance or otherwise, as to him or them shall seem right and proper; or in case it shall appear to the satisfaction of such justice or justices, magistrate or magistrates, either by the confession of the offender or offenders or otherwise, that he, she, or they hath not or have not goods or chattels within the jurisdiction of such justice or justices, magistrate or magistrates, sufficient whereon to levy all such penalties and forfeitures, costs and charges, such justice or justices, magistrate or magistrates, may at his or their discretion, without issuing any warrant of distress, commit the offender or offenders for such period of time, and in such and like manner, as if a warrant of distress had been issued and a *nulla bona* returned thereon.

In cases where penalties are directed to be recovered by [illegible] but no remedy provided where sufficient distress cannot be found, justices may commit the offender, &c.

By § 2. Reciting that "by some acts certain penalties or sums of money are to be recovered before a justice or justices of the peace, or a magistrate or magistrates, and he or they is and are authorized to issue forth his or their warrant for levying such penalties or sums of money, by distress and sale of the goods and chattels of the offender or defendant; but no further remedy is provided in case no sufficient goods and chattels can be found whereon to levy such penalties or sums of money;" it is enacted, "That whenever it shall appear to any such justice or justices of the peace, magistrate or magistrates, by whom any penalty or sum of money is adjudged to be paid, upon the return of any such warrant of distress, that no sufficient goods and chattels of the offender or defendant can be found whereon to levy the sum adjudged to be paid, and all costs and charges, within the jurisdiction of such justice or justices, magistrate or magistrates; or in case it shall appear to such justice or justices, magistrate or magistrates, either by the confession of the party or parties, or otherwise, that he, she, or they have not sufficient goods and chattels within the jurisdiction of such justice or justices, magistrate or magistrates, sufficient whereon to levy such sum of money, costs, and charges; such justice or justices, magistrate or magistrates, at his or their discretion, and without issuing any warrant of distress may proceed in such and the like manner as if a warrant of distress had been issued and a *nulla bona* returned thereon; and it shall be lawful for such justice or justices, or magistrate or magistrates, to issue forth his or their warrant for committing such offender or defendant to the common gaol, for any term not exceeding three

calendar months, unless the sum adjudged to be paid, and all costs and charges of the proceedings, shall be sooner paid: Provided always, that the amount of such costs, and expences shall be specified in such warrant of commitment."

5 G. 4. c. 18.

§ 3. Enacts "that in the case of any offender or offenders committed to the common gaol or house of correction for default of payment of such penalty or forfeiture, together with the reasonable costs and charges attending the conviction, if such offender or offenders shall at any time, during the period of his, her, or their imprisonment, pay or cause to be paid to the governor or keeper of the prison, the full amount of such penalty, together with the costs and charges, it shall be lawful for such governor or keeper of such prison, and he or they are hereby required forthwith to discharge such offender or offenders from his or their custody."

If offender, after committal to prison, shall pay the amount of penalty, &c. to the keeper, he shall be forthwith discharged.

By § 4. After reciting "whereas cases may occur where the recovery of such penalty or forfeiture by distress and sale of the goods and chattels of the offender or offenders may appear to the justice or justices of the peace, or magistrate or magistrates, for any county, riding, soke, city, division, or place, to be attended with consequences ruinous, or in an especial manner injurious to the offender or offenders and their family or families:" it is enacted, "That the justice or justices, and magistrate or magistrates aforesaid, shall be empowered, and they are hereby authorized, in all cases and upon all such occasions as to them shall seem fit, and where such consequences are likely to arise, to cause to be withheld the issue of any warrant or warrants of distress, and to commit the offender or offenders aforesaid immediately after conviction, and in default of payment of the penalty or forfeiture, with costs and charges, to the common gaol or house of correction, for such time and in such manner as are in such acts respectively mentioned and directed: Provided always, that it be by the desire or with the consent in writing of the party or parties upon whose property the penalty or forfeiture is to be levied."

Justices empowered to commit to prison without issuing warrant of distress in certain cases.

Consent of party.

By § 5. Nothing herein contained shall extend or be construed to extend to that part of the U. K. of *G B.* and *Ireland* called *Scotland.*

Act [illegible] extend [illegible] Scotland.

By § 6. After reciting "whereas warrants addressed to constables, headboroughs, tithingmen, borsholders, or other peace officers of parishes, townships, hamlets, or places, *in their characters of and as constables, headboroughs, tithingmen, borsholders, or other peace officers of such respective parishes, townships, hamlets, or places, cannot be lawfully executed by them out of the precincts thereof respectively*, whereby means are afforded to criminals and others of escaping from justice:" it is enacted, "That it shall and may be lawful to and for each and every constable, and to and for each and every headborough, tithingman, borsholder, or other peace officer, for every parish, township, hamlet, or place, to execute any warrant or warrants of any justice or justices of the peace, or of any magistrate or magistrates, within any parish, township, hamlet, or place, situate, lying, or being within that jurisdiction for which such justice or justices, magistrate or magistrates, shall have acted when granting such warrant or warrants, or when backing or indorsing any such warrant or warrants, in such and the like manner as if such warrant or warrants had been addressed to such

Constables may execute warrants out of their precincts, provided it be within the jurisdiction of the justice granting or backing the same.

6 G. 4. c. 18.

constable, headborough, tithingman, borsholder, or other peace officer, especially by his name or names, and notwithstanding the parish, township, hamlet, or place in which such warrant or warrants shall be executed, shall not be the parish, township, hamlet, or place for which he shall be constable, headborough, tithingman, or borsholder, or other peace officer, provided that the same be within the jurisdiction of the justice or justices, magistrate or magistrates, so granting such warrant or warrants, or within the jurisdiction of the justice or justices, magistrate or magistrates, by whom any such warrant or warrants shall be backed or indorsed." (*a*)

A.

A. Complaint to be exhibited in Writing before a (*b*) Justice, in the case of Goods clandestinely removed, on stats. 11 *G.* 2. *c.* 19. § 4. *ante*, p. 875. and 3 *G.* 4. *c.* 23. § 2. p. 731.

County of ——— } *BE it remembered, that this* ——— *day of* ———, A. I., *of* ———, *complaineth that* A. T., *of* ———, *hath fraudulently and clandestinely removed and conveyed away certain goods and chattels of* ———, *not exceeding the value of* 50l., *from* ———, *at* ———, *to prevent* ——— *from distraining the said goods and chattels for arrears of rent due to the said* ———, *for the said* ———. *And that* A. O., *of* ———, *yeoman, and* B. O., *of* ———, *yeoman, wilfully and knowingly aided and assisted the said* A. T., *in so fraudulently and clandestinely removing and conveying away the said goods and chattels, and in concealing the same.*

A. I.

Exhibited at ———, the ——— day of ———, before me ———, esquire, justice of the peace of ———, residing near ———, not being interested in ———.

B. Warrant thereupon to summon the Parties concerned.

County of ——— } To the Constable of ———.

WHEREAS a complaint in writing hath been this ——— *day of* ———, *exhibited before me* ———, J. P., *esquire, justice of the peace* ———, *residing near* ———, *not being interested in* ———, *by* A. I. *of* ———, *gentleman, setting forth that* A. T. *of* ———, *yeoman, hath fraudulently and clandestinely removed and conveyed away certain goods and chattels of* ———, *not exceeding the value of* 50l. *from* ———, *to prevent*

(*a*) Previous to stat. 5 G.4. c. 18. § 6. a case occurred in which a warrant was directed " To *A. B.*, to the constables of *W.*, and to all other H. M.'s officers." Held, that the constables of *W.* (their names not being inserted in the warrant) could not execute it out of that district. *R.* v. *Weir and others, Sittings in Bank after H. T.* 1823. 1 *B. & C.* 288.

(*b*) One justice may receive the complaint and issue the summons. See stat. 3 G.4. c.23. § 2. *ante*, tit. Conviction.



——— from distraining the said goods and chattels for arrears of rent due to the said ——— for the said ———. And that A. O. of ———, yeoman, and B. O. of ———, yeoman, wilfully and knowingly aided and assisted the said ——— in so fraudulently and clandestinely removing and conveying away the said goods and chattels, and in concealing the same; these are therefore to command you forthwith to summon the said A. T., A. O., and B. O. to appear before two or more justices of the peace at ———, on the ——— day of ———, at the hour of ———, to answer the matter of the said complaint. Given under my hand and seal at ———, the ——— day of ———.

J. P. (*L. S.*)

C. Order of two Justices upon the foregoing Warrant. [*Ante*, p. 876.] C.

County of ——— to wit. } The order and adjudication of ———, and ——— ———, justices of the peace.

WHEREAS ———, of ———, hath been duly charged before J. P., *esquire, one of his majesty's justices of the peace for the said county (residing near the place where the goods and chattels hereafter mentioned were ———, and not being interested in the lands or tenements from whence the same were removed), with having fraudulently and clandestinely removed and conveyed away h ——— goods and chattels, not exceeding the value of* 50l., *from ———, to prevent ——— from distraining the said goods and chattels for arrears of rent due to h ——— for the said ———.*

And whereas ——— have been also duly charged before the said J. P., *esquire, with having wilfully and knowingly aided and assisted the said ——— in so fraudulently and clandestinely removing and conveying away the said goods and chattels, and in concealing the same: And the said* J. P., *esquire, as such justice having summoned the parties concerned, and we the said undersigned justices having examined the fact and all proper witnesses upon ———, and it appearing and being fully proved before us, that the said ——— did so fraudulently and clandestinely remove and convey away the said goods and chattels as aforesaid, being of the value of ———, and it also appearing and being fully proved before us, that the said ——— wilfully and knowingly aided and assisted the said ——— in so removing and conveying away the said goods and chattels as aforesaid, and in concealing the same: We the said justices do therefore, this ——— day of ———, one thousand eight hundred and ———, determine, and adjudge that the said ——— are guilty of the offences with which they are charged as aforesaid, and that they are hereby convicted thereof: And we do hereby order and adjudge them to pay the sum of ———, being double the value of the said goods and chattels, to ———, or his bailiff, servant, or agent, on or before the ——— day of ———. Given under our hands and seals, at ———, the ——— day of ———, one thousand eight hundred and ———.*

J. P. (*L. S.*)
K. P. (*L. S.*)

D. Conviction, upon stat. 11 *G.* 2. *c.* 19. § 3. of a Tenant for fraudulently removing his Goods or Chattels, or other Person for knowingly assisting him therein, or in concealing the same Goods or Chattels, to prevent the Landlord from distraining the same for Rent, *ante*, p. 875. See also 3 *G.* 4. *c.* 23. *ante*, tit. "Conviction."

County of } *BE it remembered, that on the* ——— *day of* ——— } ———, *in the year of our Lord* ———, *at* ———, *in the county of* ———, A. L. *of* ———, *in the said county of* ———, *gent.* [if the complaint is exhibited by the bailiff, servant, or agent of the landlord, say, *bailiff, servant, or agent*, as the case may be, *of* A. L. *of* ———, *in the county of* ———, *gent.*], *personally came before me* [or, *before us, &c.*], J. P., *esquire, one* [or *more*, as the case may be] *of his majesty's justices of the peace for the said county of* ———, *and residing near the place whence the goods and chattels hereinafter mentioned were removed* [or, if the proceedings are before justices residing near the place where the goods and chattels were found, say, *residing near the place where the goods and chattels hereinafter mentioned were found*], *we or either of us not being interested in the* ——— [here describe the place whence such goods and chattels were removed, as *messuage, dwelling-house, cottage, close,* &c. as the case may be,] *and* [if the complaint is exhibited by the bailiff, servant, or agent of the landlord, say, *at the instance and in the behalf of the said* A.L.] *and informed me* [or, *us*, &c.] *that* A. O. *of the parish of* ———, *in the county of* ———, *yeoman*, [or *one* A. T. naming the tenant] *for* the half of a year *next before and ending at and upon the* 25th day of December, *in the year of our Lord* ———, *held and enjoyed a certain* [here describe the demised premises] *with the appurtenances situate, lying, and being in the parish of* ———, *in the county of* ———, *as tenant thereof to the said* A. L. *under a demise thereof theretofore made, at the yearly rent of* ———, *payable to the said* A. L. half yearly, *to wit*, on the 24th day of June and the 25th day of December *by even and equal portions; and that on the said* 25th day of December, *in the said year of our Lord* ———, *the sum of* ———, *of the rent aforesaid*, for the half of a year, *ending on the said* 25th day of December, *in the said year of our Lord* ———, *on that day in that year became and was, and still is due, in arrear, and unpaid from the said* A. T. *to the said* A. L. *and that the said sum of* ——— *of the rent aforesaid so being due, in arrear, and unpaid from the said* A. T. *to the said* A. L. *the said* A. T. *afterwards, that is to say, on the* ——— *day of* ———, *in the year of our Lord* ———, *fraudulently and clandestinely conveyed away and carried off and from the said demised premises*, [or you may say, *off and from a certain* close, *part, and parcel of the said demised premises*] *one*, &c. [here describe the goods and chattels fraudulently removed and conveyed away] *being the proper goods and chattels of the said* A. T. *and the same not exceeding the value of* 50l. *but being of less value, to wit, of the value of* ———, *of lawful money of* Great Britain, *to prevent the said* A. L. *from distraining the same for the said arrears of rent so then due and unpaid*

as aforesaid [if the complaint is against a third person for assisting the tenant in such fraudulent carrying off his goods, say, *and that the said* A. O. *on the same day and year aforesaid, did wilfully and knowingly aid and assist the said* A. T. *in such fraudulent conveying away and carrying off and from the said demised premises the said goods and chattels and every part thereof*, or, if the complaint against such third person is for concealing the goods so fraudulently carried off the premises, say, *and that the said* A. O. *afterwards, and after the said goods and chattels were so fraudulently and clandestinely conveyed away and carried off and from the said demised premises as aforesaid, to wit, on the same day and year aforesaid at the parish of ———, in the county of ———, did wilfully and knowingly aid and assist the said* A. T. *in concealing the said goods and chattels and every part thereof*], *contrary to the form of the statute in such case made and provided; whereby and by force of the said statute, the said* A. O. *hath forfeited to the said* A. L. *from whose estate the said goods and chattels were so fraudulently carried off as aforesaid, double the value of the said goods so by him carried off* [or *concealed*] *as aforesaid. Whereupon the said* A. O. *after being duly summoned to answer to the said charge, appeared before us, on the ——— day of ———, in the said year of our Lord ———, at ——— aforesaid, in the said county of ———, and having heard the charge contained in the said information, declared that he was not guilty of the said offence* [or, as the case may happen to be]; *Whereupon we, the said justices did proceed to examine into the truth of the charge contained in the said information, and on the ——— day of ———, aforesaid, at the parish of ———, aforesaid, one credible witness, to wit,* A. W. *of ———, in the county of ———, yeoman, upon his oath deposeth and saith in the presence and hearing of the said* A. O. *that* [here state the evidence and as nearly as possible in the words used by the witness; it will be necessary to have proof of the particulars of the demise; the amount of the rent in arrear: the fact of removing the goods, and the circumstances of privacy or fraud attending it; and if the complaint is against a third person for assisting, the fact of such assistance and its particular manner; or if the complaint against such third person is for concealing the goods or chattels so fraudulently conveyed away by the tenant, the fact of concealing such goods and chattels, and which of them in particular, and the place where they were found so concealed; and lastly, the value of the goods so removed and carried away or concealed.] *Therefore it manifestly appearing to us that the said* A. O. *is guilty of the said offence, charged upon him in the said information, we do hereby convict him of the offence aforesaid, and do declare and adjudge, that he the said* A. O. *hath forfeited the sum of ———, of lawful money of* Great Britain [*being double the value of the said goods and chattels in the said information mentioned*], *for the offence aforesaid, to be paid according to the form of the statute in that case made and provided. Given under our hands and seals, the ——— day of ———, in the year of our Lord ———.*

J. P. (*L. S.*)
K. P. (*L. S.*)

E.

E. Warrant of Distress, in case the Offenders, having Notice, refuse or neglect to pay, pursuant to the preceding Order. See Stats. 11 *Geo.* 2. *c.* 19. p. 875. 27 *Geo.* 2. *c.* 20. p. 897., and 5 *G.* 4. *c.* 18. p. 899.

County of ———. To the constable of ———.

WHEREAS A. T.. *of* ———, *yeoman,* A. O. *of* ———, *yeoman, and* B. O. *of* ———, *yeoman, were by an order dated the* ——— *day of* ———, *under the hands and seals of us* ———, *and* ———, *justices of the peace of* ———, *residing near* ———, *not being interested in* ———, *ordered to pay the sum of* ——— *to* ———, *or his bailiff, servant, or agent, on or before the* ——— *day of* ———, *being double the value of certain goods and chattels of the said* ———, *which the said* A. T. *was before us duly convicted of having fraudulently and clandestinely removed and conveyed away from* ———, *to prevent the said* ——— *from distraining the said goods and chattels for arrears of rent due to the said* ——— *for the said* ———, *and which the said* A. O. *and* B. O. *were also duly convicted before us of having wilfully and knowingly aided and assisted the said* A. T. *in so fraudulently and clandestinely removing and conveying away, and in concealing the same: And whereas the said* A. I., A. O., *and* B. O. *having notice of our said order, have refused or neglected to pay, and have not paid, the said sum of* ——— *pursuant thereunto, and the same hath been fully proved before us: These are therefore to command you to levy the said sum of* ——— *by distress and sale of the goods and chattels of the said* A. T., A. O., *and* B. O., *and we do hereby order and direct the goods and chattels so to be distrained, to be sold and disposed of, within* ——— *days, unless the said sum of* ———, *for which such distress shall be made, together with the reasonable charges of taking and keeping such distress, shall be sooner paid: And you are also hereby commanded to certify to us what you shall do by virtue of this our warrant. Given under our hands and seals at* ——— *the* ——— *day of* ———.

J. P. (*L. S.*)
K. P. (*L. S.*)

F.

F. The Constable's Return thereupon of the Want of Distress.

County of ———. *I* A. C., *constable of* ———, *do hereby certify* ———, *and* ———, *justices of the peace of* ———, *that I have made diligent search for, but do not know of nor can find any goods and chattels of* ———, *and* ———, *and* ———, *or of any of them, by distress and sale whereof I may levy the sum of* ———, *pursuant to their warrant for that purpose. Dated the* ——— *day of* ———. *Given under my hand this* ——— *day of* ———.

J. P.

G. Commitment thereupon to the House of Correction. G.*

County of ———. { To the constable of ———, *and also to the keeper of the house of correction at* ———.

WHEREAS ———, *and* ———, *and* ———, *were by an order dated the* ——— *day of* ———, *under the hands and seals of us* ———, *justices of the peace of* ———, *residing near* ———, *not being interested in* ———, *ordered to pay the sum of* ——— *to* ———, *or to his bailiff, servant, or agent, on or before the* ——— *day of* ———, *being double the value of certain goods and chattels of the said* ———, *which the said* ——— *was before us duly convicted of having fraudulently and clandestinely removed and conveyed away from* ———, *to prevent the said* ——— *from distraining the said goods and chattels, for arrears of rent due to the said* ——— *for the said* ———: *And which the said* ———, *and* ———, *were also duly convicted before us of having wilfully and knowingly aided and assisted the said* ——— *in so fraudulently and clandestinely removing and conveying away, and in concealing the same: And whereas the said* ———, *and* ———, *and* ———, *having notice of our said order, have refused or neglected to pay and have not paid the sum of* ———, *pursuant thereunto, and the same hath been duly proved before us; and whereas it appears to us by the return of* ———, *constable of* ———, *dated the* ——— *day of* ———, *that he hath made diligent search for, but doth not know of nor can find any goods and chattels of the said* ———, *and* ———, *and* ———, *or any of them, by distress and sale whereof, the said sum of* ——— *may be levied, pursuant to our warrant duly made and issued for the levying the said sum of* ———, *by distress and sale of the goods and chattels of the said* ———, *and* ———, *and* ———: *These are therefore to command you the said constable of* ———, *to apprehend the said* ———, *and* ———, *and* ———, *and convey them to the said house of correction at* ———, *aforesaid, and deliver them there to the said keeper of the said house of correction: And these are also to command you the said keeper of the said house of correction to receive them the said* ———, *and* ———, *and* ———, *into the said house of correction, and there keep them to hard labour, without bail or mainprize, for the space of six months, unless the said sum of* ——— *so ordered to be paid as aforesaid, shall be sooner satisfied. Given under our hands and seals at* ———, *the* ——— *day of* ———.

J. P. (*L. S.*)
K. P. (*L. S.*)

H.

H. Form of a Complaint and Oath to be made before a Justice, in case of Goods and Chattels being fraudulently and clandestinely removed and conveyed away and secured in a Dwelling-House, to prevent them from being taken and seized as a Distress for Arrears of Rent. [*Ante*, p.875.]

County of ———. *BE it remembered, that this ——— day of ———,* A. I. *of ———, yeoman, complaineth, and maketh oath, that certain goods and chattels of* A. O. *of ———, yeoman, have been fraudulently and clandestinely conveyed and carried away from ———, by the said* A. O., *his servant or servants, agent or agents, or other person or persons, aiding or assisting therein to prevent ——— from distraining the said goods and chattels for arrears of rent due to the said ——— for the said ———, and that the said goods and chattels are put, placed, or kept in the house, barn, stable, outhouse, yard, close, or other place of ———, at ———, locked up, fastened, or otherwise secured so as to prevent the said goods and chattels from being taken and seized as a distress for arrears of rent: And that the said* A. I. *hath a reasonable ground to suspect, and doth suspect, that the said goods and chattels are in the dwelling-house of the said ——— at ———.*

A. I.

Taken and sworn at ———, the ——— day of ———, before ———.

I.

I. Warrant thereon.

County of ———. { To the constable, headborough, borsholder, or other peace officer of ———, and to each and every of them.

WHEREAS A. I., *of ———, yeoman, hath this ——— day of ———, exhibited his complaint and made oath before ———, justices of the peace for ———, that certain goods and chattels of* A. O. *of ———, yeoman, have been fraudulently and clandestinely conveyed and carried away from ———, by the said* A. O., *his servant or servants, agent or agents, or other person or persons aiding or assisting therein, to prevent ——— from distraining the said goods and chattels for arrears of rent due to the said ———, for the said ———: And that the said goods and chattels are put, placed, or kept in the house, barn, stable, outhouse, yard, close, or other place of ———, at ———, locked up, fastened, or otherwise secured, so as to prevent the said goods and chattels from being taken and seized as a distress for arrears of rent; and that the said* A. I. *hath a reasonable ground to suspect, and doth suspect that the said goods and chattels, are put, placed, or kept in the house, barn, stable, outhouse, yard, close, or other place of ———, at ———: These are therefore to command you, and each and every of you, to aid and assist ———, his steward, bailiff, receiver, or other person or persons empowered to take and seize as a*

distress for rent the said goods and chattels, in the day-time to break open, and enter into the said dwelling-house, barn, stable, outhouse, yard, close, or other place of the said ——— at ——— and to take and seize the said goods and chattels for the said arrears of rent, according to law. Given under my hand and seal at ——— the ——— day of ———.

K. Recognizance on Appeal against a Conviction by two Justices, for fraudulently assisting to convey goods off the premises to avoid a distress.—*From Y. C. P.* 75.

[See stat. 11 *G.* 2. c. 19. § 5. & 6.—*ante*, p.879.]

County of ——— } *BE it remembered, that on the ——— day of ———, in the ——— year of the reign of our sovereign lord* George *the fourth, by the grace of God of the United Kingdom of* Great Britain *and* Ireland, *king, defender of the faith,* A. O. *of ———, in the said county, yeoman, and* A. S. *of ———, in the said county, ———, personally came before us,* J. P. *and* K. P. *esquires, two of his majesty's justices of the peace in and for the said county, and acknowledged themselves to owe to our said lord the king, the sum of ——— l.* [the amount must be double the sum ordered to be paid by the conviction, 11 *G.* 2. *c.* 19. § 6. *ante*, p.879.], *to be levied of their goods and chattels, lands and tenements, to the use of our said lord the king, his heirs and successors, if the said* A. O. *shall make default in the condition following:—*

The condition of this recognizance is such, that whereas the said A. O. *is this day duly convicted before us, the above-named justices of the peace, of having wilfully and knowingly aided and assisted* B. O. *of ———, within the parish of ——— , in the county of ———, yeoman, in the night of ———, the ——— day of ——— last, in fraudulently and clandestinely removing and conveying away part of the goods and chattels of the said* B. O. *from* [describe the place, house, tenement, &c., and where situate, &c.] *not exceeding the value of fifty pounds, and in concealing the same, so as to prevent* E. E. *of ———, in the said county, esquire, from taking and seizing the same for arrears of rent due to the said* E. E. *from the said* B. O., *for a certain tenement,* [or, as the case may be] *situate at ———, aforesaid; for which offence the said* A. O. *has been adjudged to forfeit to the said* E. E. *the sum of ——— l., being double the value of the said goods, by the said* A. O. *so carried off and concealed: Now if the said* A. O. *shall personally appear at the next quarter sessions of the peace to be held at ———, for the said county of ———, and commence and prosecute an appeal against the said conviction, and pay such costs as shall be then and there awarded by the said court against the said* A. O., *and not depart without leave of the court, then this recognizance to be void.*

Acknowledged before us,

J. P.
K. P.

L.

L. Information for a Rescous and Pound Breach, at Common Law.—*From Y. C. P.* 77, *et seq.*

[*Ante*, p. 881.]

County of ——— } *THE information and complaint of* A. I., *constable of* ——— [as the case may be], *in the said county, taken and made upon oath before me,* J. P. *esquire, one of his majesty's justices of the peace in and for the said county, the* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ——— : *Who says, that as constable of the said parish of* ——— [or, *bailiff, &c.* or, as the case may be], *he received a warrant under the hand and seal of* E. E. *esquire* [or, *me*, as the case may be], *one of his majesty's justices of the peace in and for the said county of* ———, *bearing date the* ——— *day of* ———, *instant, by which he, the said constable, was commanded to sell such and so much of the goods and chattels of* A. O. *late of* ———, *in the said county, yeoman, as should satisfy and pay* T. K. *constable of the aforesaid parish of* ———, *the sum of* ——— *l., being the charges of conveying the said* A. O. *to the house of correction* [or, as the case may be], *of the said county, at* ———, *in the said county, to which house of correction* [or, as the case may be,] *he the said* A. O. *was committed for a misdemeanor* [or, *felony* as the case may be], *by a warrant* * *under the hand and seal of the said* E. E.; *that under the said warrant first beforementioned, he the said informant yesterday morning, being the* ——— *day of* ———, *instant, took a distress on a quantity of potatoes* [or, as the case may be], *belonging to the said* A. O., *in a house in the village of* ———, *in the parish of* ———, *in the county aforesaid, and put a lock on the door; but that last evening the said lock so placed on the said distress was wilfully broken by* B. O. [or, the said A. O., as the case may be], *of* ———, *in the said county, labourer, and that the said potatoes, so taken as a distress, were rescued by the said* B. O. [or, A. O., as the case may be], *in breach of the peace, and to the delaying of justice. He therefore prays that hue and cry may be levied against the said B. O.* [or, A. O., as the case may be], *for the said rescous and pound breach, as against those who break the peace.*

Ante, p. 680.

Before me, A. I.
J. P.

M.

M. Warrant to levy Hue and Cry on the foregoing Information.

[*Ante*, p. 881.]

County of ——— } To all constables and other officers, as well in the said county of ——— as elsewhere, to whom the execution hereof does or shall belong.

WHEREAS A. I., *constable of* ———, [as the case may be,] *in the said county, has this day made information and complaint on oath before me,* J. P., *esquire, one of his majesty's justices of the peace in and for the said county of* ———, *that as constable of the said parish of* ———, [or, *bailiff, &c.*, as the

case may be,] *he received a warrant under the hand and seal of* E. E., *esquire* [or, *me*, as the case may be], *one of his majesty's justices of the peace in and for the said county of* ———, *bearing date the* ——— *day of* ———, *instant, by which he the said constable was commanded to sell such and so much of the goods and chattels of* A. O., *late of* ———, *in the said county, yeoman, as should satisfy and pay* T. K., *constable of the aforesaid parish of* ———, *the sum of* ——— *l., being the charges of conveying the said* A. O. *to the house of correction* [or, as the case may be], *of the said county at* ———, *in the said county, to which house of correction* [or, as the case may be], *he the said* A. O. *was committed for a misdemeanor,* [or, *felony*, as the case may be], *by a warrant under the hand and seal of the said* E. E.; *that under the said warrant first before-mentioned, he the said informant yesterday morning, being the* ——— *day of* ———, *instant, took a distress on a quantity of potatoes* [or, as the case may be], *belonging to the said* A. O., *in a house in the village of* ———, *in the parish of* ———, *in the county aforesaid, and put a lock on the door; but that last evening the said lock, so placed on the said distress, was wilfully broken by* B. O., [or, *the said* A. O., as the case may be], *of* ———, *in the said county, labourer, and that the said potatoes, so taken as a distress, were rescued by the said* B. O. [or, A. O., as the case may be], *in breach of the peace, and to the delaying of justice: These are therefore to command you forthwith to raise the power of the towns within your several precincts, and to make diligent search therein for the said* B. O. [or, A. O., as the case may be], *and to make fresh pursuit and hue and cry after him from town to town, and from county to county, as well by horsemen as by footmen; and to give due notice thereof in writing, describing in such notice the person of the said* B. O. [or, A. O., as the case case may be], *and the offence aforesaid, unto every next constable on every side, until he shall come to the sea shore, or until the said offender shall be apprehended; and that you do carry the said* B. O. [or, A. O., as the case may be], *when so apprehended, before some one of his majesty's justices of the peace in and for the said county of* ———, *or of the county where he shall be so apprehended, to be by such justice examined and dealt withal according to law. And hereof fail you not respectively upon the peril that shall ensue thereon. Given under my hand and seal at* ———, *in the said county of* ———, *the* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———.

J. P. (*L. S.*)

N. Commitment thereon. — *From Y. C. P.* 80. N.

[*Ante*, p. 881.]

County of ——— } *J. P.* esquire, one of the justices of our lord the king, assigned to keep the peace within the said county, to the constable of ———, in the said county, and to the keeper of the common gaol [*or*, house of correction] at ———, in the said county.

THESE are to command you the said constable, in his majesty's name, forthwith to convey and deliver into the custody of the

said keeper of the said common gaol, [or, as the case may be,] *the body of* B. O., *late of* ——, *in the said county, labourer, charged upon the oath of* A. I., *constable of* —— [or, as the case may be], *in the said county, before me with rescous and pound breach, at the village of* ——, *in the parish of* ——, *aforesaid, on the* —— *day of* ——, *instant, by wilfully breaking the lock placed on the door of a house in the said village of* ——, *by the said* A. I., *in which the said constable* A. I. *had impounded a quantity of potatoes, which he the said* A. I. *had taken and so impounded, by virtue of a warrant of distress, under the hand and seal of* E. E., *esquire, one of his majesty's justices of the peace in and for the said county* [or, *me, the said justice,* as the case may be]; *and you the said keeper are hereby required to receive the said* B. O. *into your custody, in the said common gaol* [or, as the case may be], *and him there safely to keep, until the next general quarter sessions of the peace* [or, *general gaol delivery*], *for the said county, unless in the mean time he shall find sufficient sureties, as well for his appearance at the said general quarter sessions* [or, *general gaol delivery*], *to answer unto the said offence as in the mean time to keep the peace and be of good behaviour towards his majesty and all his liege people, and especially towards the said* A. I. *Given under my hand and seal at* ——, *in the said county, the* —— *day of* ——, *in the year of our Lord one thousand eight hundred and* ——.

O. Recognizance to prosecute for Rescous and Pound Breach.—*From Y. C. P.* 82.

[*Ante*, p. 881.]

County of } ——— } *BE it remembered, that on the* —— *day of* ——, *in the* —— *year of the reign of our sovereign lord* George *the fourth, of the United Kingdom of* Great Britain *and* Ireland, *king, defender of the faith,* A. I. *constable of* ——, *in the said county* [or, as the case may be], *personally came before me,* J. P. *esquire, one of the justices of our lord the king, assigned to keep the peace of the said county, and acknowledged himself to owe to our said lord the king, the sum of* ——*l. of good and lawful money of* Great Britain, *to be made and levied of his goods and chattels, lands and tenements, to the use of our said lord the king, his heirs and successors, if he the said* A. I. *shall fail in the condition hereunder written.*

The condition of the above recognizance is such, that if the abovebound A. I. *shall personally appear at the next general quarter sessions of the peace* [or, *general gaol delivery,* as the case may be], *to be holden at* ——, *for the said county of* ——, *and then and there prefer a bill of indictment against* B. O., *late of* ——, *in the said county, labourer, for a rescous and pound breach at the village of* ——, *in the parish of* ——, *in the said county, on th* —— *day of* —— *instant, and shall then and there give evidence concerning the same, to the jurors who shall inquire thereof on the part of our said lord the king; and in case the same shall be found a true bill, then if the said* A. I. *shall personally appear before the jurors who shall pass upon the trial of the said* B. O.,

and give evidence upon the said indictment, and not depart without leave of the court, then this recognizance to be void.
Acknowledged before me,
J. P.

P. Recognizance with Sureties to answer to an Indictment for Rescous and Pound Breach. — *From Y. C. P.* 83.

[*Ante*, p. 881.]

County of ——— } to wit. *BE it remembered, that on the* ——— *day of* ———, *in the* ——— *year of the reign of our sovereign lord* George *the fourth, of the United Kingdom of* Great Britain *and* Ireland, *king, defender of the faith,* B. O. *of* ———, *in the said county, labourer,* S. C. *of* ———, *in the said county, cordwainer, and* T. D. *of* ———, *in the said county, sadler, personally came before me,* J. P., *esquire, one of the justices of our lord the king, assigned to keep the peace in the said county, and acknowledged themselves to owe to our said lord the king the several sums following, that is to say, the said* B. O. *the sum of* ———*l., and the said* S. C. *and* T. D. *the sum of* ———*l., each, of lawful money of* Great Britain, *to be levied of their several goods and chattels, lands and tenements respectively, to the use of our said lord the king, his heirs and successors, if the said* B. O. *shall make default in the condition hereunder written.*

The condition of this recognizance is such, that if the above-bound B. O. *do and shall personally appear at the next general quarter sessions of the peace, which shall be holden at* ———, *in and for the said county of* ——— [or, *next general gaol delivery,* as the case may be], *and then and there answer to an indictment to be preferred against him, by* A. I., *constable of* ———, *in the said county, for a rescous and pound breach at the village of* ———, *in the parish of* ———, *aforesaid, on the* ——— *day of* ———, *instant, and in the mean time shall keep the peace, and be of the good behaviour towards his majesty, and all his liege people, and especially towards the said* A. I., *and not depart without leave of the court; then this recognizance to be void.*
Acknowledged before me,
J. P.

Q. If the Landlord does not distrain himself, he may authorise any other Person, in the following manner, or to the like effect: See *ante*, p. 884.

I DO hereby authorise you, A. B. *of* ———, *in the county of* ———, *yeoman, to distrain the goods and chattels of* A. T. *of* ———, *in the said county, husbandman, in the houses, outhouses, and premises* [or as the case may be] *which he farms of me, situate at* ———, *for* ——— *arrear of rent due to me for the said premises, at* ——— *last past; and for your so doing this shall be a sufficient warrant. Witness my hand the* ——— *day of* ———.

Then either the landlord himself, or the person empowered by him as aforesaid, must go upon the premises and seize the distress; or some part in the name of the whole, and make an inventory thereof as follows:

An inventory of the several goods and chattels distrained by us whose names are underwritten, the ——— day of ———, in the year ———, in the houses, outhouses, and lands of A. T. *in* ———, *by the authority and on the behalf of* A. L. *of* ———, *for* ——— *pounds arrear of rent due to him the said* A. L.

In the dwelling-house:
One table,
Six chairs, &c.
In the cow-house:
Six cows,
Two calves, &c.

R.

R. Notice. *Ante*, p. 884.

A. T.

TAKE notice, that by the authority and on the behalf of your landlord, A. L., *I have this ——— day of ———, in the year of our Lord ———, distrained the several goods and chattels specified in the schedule hereunto annexed in your houses, outhouses, and grounds at ———, for ——— pounds arrear of rent due to him the said* A. L.; *and if you shall not pay the said rent so due and in arrear as aforesaid, or replevy the said goods and chattels, I shall, after the expiration of five days from the date hereof, cause the said goods and chattels to be appraised and sold, according to the statute in that case made and provided. Given under my hand the day and year first above written.*

A. D.

Witness that a copy hereof was this day delivered to the said A. T. [*Or left at the chief mansion-house of the said* A. T.]
A. W. (*a*)

A copy of which inventory and notice must be left with the tenant.

If the rent be not paid, nor the goods replevied before the time mentioned in the notice, the person distraining must go to the place where the distress is secured, with a constable and two sufficient appraisers, who are to take the following oath, to be administered by the constable:

S.

S. Appraiser's Oath. *Ante*, p. 884.

YOU and each of you shall well and truly appraise the goods and chattels mentioned in this inventory, according to the best of your understanding: So help you God.

(*a*) If the landlord himself distrain, the forms may be easily altered accordingly.

T. Form of the Appraisement. (a) *Ante*, p. 884. T.

THE appraisement may be in the form of the inventory, specifying the particulars, and their respective valuations: And then add at the end,

Appraised by us, this ——— *day of* ———, *in the year* ———.

A. P.
B. P. } sworn appraisers.

After which the goods must be sold for the best price that can be had, and after deducting the rent, and reasonable charges attending the distress, the overplus (if any) is to be returned to the tenant.

But if the tenant request the landlord to give further time for selling the goods distrained, and the landlord consent, it is best for the tenant to sign a memorandum thereof to the following effect:

I A. T. *do hereby request that* A. L., *my landlord, who on the* ——— *day of* ———, *last, distrained my goods and chattels in my houses, outhouses, and grounds at* ———, *in the county of* ———, *will forbear the sale thereof, until the* ——— *day of* ——— *next, in order to enable me to discharge my said rent; and I do consent that the said goods and chattels so distrained may remain at my proper cost, and in his possession, upon the premises, where they now are until that time. And I undertake not to replevy the said goods and chattels. In witness whereof I have hereunto set my hand the* ——— *day of* ———. A. T.
Witness, A. W.

U. Information and Complaint to recover Possession of deserted Premises, upon View of two Justices, where no sufficient Distress can be made to countervail Arrears of Rent. *Ante*, p. 893. U.

County of ——— to wit. } *THE information and complaint of* ———, *of* ———, *in the county of* ———, *taken this* ——— *day of* ———, *one thousand eight hundred and* ———, *who saith, that he, the said* ———, *did demise, at rack rent, the messuage, lands, or tenement, late called* ———, *situate at or near* ———, *in the parish of* ———, *in the county of* ———, *and that* ———, *of* ———, *in the county of* ———, *is the tenant holding the same at rack rent; and that on the* ——— *day of* ——— *last past, there was in arrear, and due unto h*———, *the said* ———, *from h*———, *the said* ———, *tenant of the said demised premises, one* ——— *year's rent thereof, and that he, the said* ———, *hath deserted the said demised premises, and left the same unoccupied, so as no sufficient distress can be had to countervail the said arrears of*

(a) Required to be upon an *ad valorem* stamp, by stat. 55 G. 3. c. 184. Sch. Part I.

rent, whereupon I the said ——— do request A. I. *and* I. P., *two of his majesty's justices of the peace for the said county, to go and view the said premises, and affix on the most notorious part thereof notice in writing, what day they will return to take a second view, and that a due remedy may be provided me, according to the form of the statute in that case made.*

Taken before us this said ——— day of ———, one thousand eight hundred and ———.

W.

W. Notice to be affixed on the Premises being deserted.

[*Ante*, p. 893.]

Abraham Sutcliffe,

TAKE notice, that upon the complaint of E. A. *of ———, in the county of ———, made unto us* A. P. *and* B. P., *esquires, two of his Majesty's justices of the peace for the said county, that you the said* A. S. *have deserted the messuage and tenement called ———, consisting of ———, situate, lying, and being at ——— aforesaid, in the county aforesaid, unto you demised at rack rent by the said* E. A., *and that there is in arrear and due from you the said* A. S., *unto the said* E. A., *one ——— year's rent for the said demised premises, and that you have left the said premises uncultivated and unoccupied, so that no sufficient distress can be had to countervail the said arrears of rent; we the said justices (having no interest, nor either of us having any interest in the said demised premises), on the said complaint as aforesaid, and at the request of the said* E. A., *have this day come upon and viewed the said demised premises, and do find the said complaint to be true; and on the ——— day of this present month of ———, we will return to take a second view thereof, and if upon such second view you, or some person on your behalf, shall not appear and pay the said rent in arrear, or there shall not be sufficient distress on the said premises, then we the said justices will put the said* E. A. *into the possession of the said demised premises, according to the form of the statute in such case made and provided. In witness whereof we have hereunto set our hands and seals, and have caused this notice to be affixed on the outer door of the mansion-house, the same being the most notorious part of the said premises, this ——— day of ———, in the ——— year of the reign of our sovereign lord* George *the fourth, of the united kingdom of* Great Britain *and* Ireland, *king.*

X.

X. Record of putting the Landlord in Possession.

[*Ante*, p. 893.]

County of ——— to wit. } *BE it remembered, that on the ——— day of ———, in the ——— year of the reign of our sovereign lord* George *the fourth, of the united kingdom of* Great Britain *and* Ireland, *king, defender of the faith, at ———, in the said county.* A. L. *of ———, in the said county ———, complained unto us* J. P., *and* K. P., *esquires, two of the justices of our said lord the king, assigned to keep the peace within the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, that he the said* A. L. *did demise*

at rack rent unto A. T. *of* ———, *husbandman, a messuage and tenement called* ———, *consisting of* ———, *situate, lying, and being at* ——— *aforesaid, in the county aforesaid, and that on the said* ——— *day of* ———, *in the year aforesaid, there was in arrear and due unto the said* A. L. *from him the said* A. T., *the tenant of the said demised premises, one* ——— *year's rent thereof, and that he the said* A. T. *hath deserted the said demised premises, and left the same uncultivated and unoccupied, so as no sufficient distress could be had to countervail the said arrears of rent; whereupon the said* A. L., *then and there, to wit, on the said* ——— *day of* ———, *in the year aforesaid, at* ——— *aforesaid, in the county aforesaid, requested of us the said justices that a due remedy should be provided, according to the form of the statute in that case made and provided; which complaint and request by us the aforesaid justices being heard, we (having no interest, nor either of us having any interest in the said demised premises), on the said* ——— *day of* ———, *in the year aforesaid, at* ——— *aforesaid, in the county aforesaid, did personally go upon and view the said demised premises, and then and there, upon our own proper view, did find the said complaint to be true, and did then and there affix, on the most notorious part of the said demised premises, to wit, upon the outer door of the mansion-house, a notice in writing under our hands and seals, that we the said justices, on the* ——— *day of* ——— *next, would return to take a second view thereof; upon which said* ——— *day of* ———, *in the year aforesaid, we did return and take a second view of the said premises, and there, upon our own proper view, did find that he the said* A. T. *did not appear, nor any person on his behalf, to pay the said rent in arrear, and that there was no sufficient distress upon the said premises, nor upon any part thereof, to countervail the said arrear of rent: therefore we the said justices, at* ——— *aforesaid, in the county aforesaid, on the* ——— *day of* ——— *aforesaid, did put the said* A. L. *into possession of the said demised premises, according to the form of the statute aforesaid. In witness whereof we the said justices unto this record do set our hands and seals, the* ——— *day of* ———, *in the year of our Lord* ———.

Y. Warrant to apprehend for Pound Breach. Y.

County of ——— to wit. } *FORASMUCH as* A. I. *hath this day made complaint on oath before me,* J. P., *esquire, one of his majesty's justices of the peace in and for the said county, that* A. O., *of the parish of* ———, *in the said county, labourer, on the* ——— *day of* ———, *in the year of our Lord* ———, *at the parish of* ——— *aforesaid, with force and arms, unlawfully and against the king's peace, did break and enter the common pound overt of and belonging to the said parish of* ———, *and to the manor of the same, and thereout unlawfully, violently, and forcibly did rescue and lead away one grey gelding, the property of him the said* A. O. *therein lawfully impounded by the said* A. B., *the said gelding having been lately taken by the said* A. B. *or his servants, as a distress damage-feasant, in a certain meadow of the said* A. B., *at* ——— *aforesaid, trespassing, and doing damage to the grass therein. These are therefore, &c. Given under my hand*

and seal, this ——— day of———, one thousand eight hundred and ———.

Distringas. See **Process**, Vol. III.
Divine Service. See **Public Worship**, Vol. III.

Dogs.

[10 G. 3. *c.* 18.]

Duty on Dogs. See **Taxes.**

So far as Dogs fall under the Consideration of the Game Laws, see title **Game**, Vol. II.

THE law takes notice of a mastiff, hound, spaniel, and tumbler, as valuable things. 1 *Saund.* 84.

Dogs mischievous.

But a *mastiff*, going in the street unmuzzled, from the ferocity of his nature being dangerous and cause of terror to H. M.'s subjects, seemeth to be a common nuisance, and consequently the owner may be indicted (A) for suffering him to go at large.

(A)

And in *Smith* v. *Pelah*, 2 *Str.* 1264. It was ruled that if a dog has once bit a man, and the owner having notice thereof keeps the dog, and lets him go about or lie at his door, an action will lie against him at the suit of the person bit, though it happened by his treading on the dog's toes; for it was occasioned by his not killing the dog on the first notice, and the safety of the king's subjects ought not afterwards to be endangered.

But in order to maintain an action for *biting* by the defendant's dog, it must be proved also that *he knew* his dog to be used to bite; but one instance is sufficient in that case. 12 *Mod.* 555.

If a man has a dog that *kills sheep*, this is not a public nuisance, but the owner of the dog (knowing thereof) is liable to an action; but if he is ignorant of such quality, he shall not be punished for this killing: and in an action upon the case for such killing, the plaintiff shall be required to prove in evidence that the dog had used to kill sheep. *Dyer*, 25. *Het.* 171.

And if a man keeps a dog accustomed to bite *sheep*, and he knows it, and notwithstanding he keeps the dog still, and afterwards the dog bites a *horse*, this shall be actionable, although he had been known before to bite sheep only; because the owner, after notice of the first mischief, ought to have destroyed or hindered him from doing any more hurt. 1 *Ld. Raym.* 110. *Bull. N. P.* 77.

But if my dog kills your sheep, and I freshly after the fact tender you the dog, you are without remedy. *Fitz. N. B.* 89. L. *b.*

If a man knowingly keep a dog accustomed to bite, and any persons coming by chance in his way be bitten, an action lies against the owner, though he had no malice against the particular

individual. *Per* Ld. *Ellenborough* C. J. *Townsend* v. *Wathen*, 9*East*, 281.

In an action on the case for keeping a dog which bit the plaintiff, it is not sufficient to prove that the dog was of a fierce and savage disposition, and generally tied up by the defendant, and that defendant promised to make plaintiff a pecuniary recompense after the latter had been bit by the dog. *Beck & Wife* v. *Dyson, cor. Ld. Ellenborough* C. J. 4 *Campb.* 198. See also 1 *Stark. N. P.* 285.

Dogs straying. Trover lies for a dog lost.

Binstead v. *Buck*, 2 *Bla. Rep.* 1117. Trover for a pointing dog. The plaintiff proved the dog to be his property, and that it was found at the defendant's house twelve months after it was lost. The defendant said the dog strayed there casually, and demanded 20*s.* for twenty weeks' keeping before he would deliver up the dog. A verdict was given for the plaintiff, subject to the opinion of the court, whether this refusal amounted to a conversion of the dog. But the counsel for the defendant declined arguing the question; and the plaintiff had judgment.

10 G.3. c.18. Stealing dogs.

By stat. 10 *G.* 3. *c.* 18. § 1. If any person shall steal any dog or dogs, of any kind whatsoever, from the owner thereof, or from any person intrusted by the owner therewith, or shall sell, buy, or receive, harbour, detain, or keep any dog or dogs of any kind whatsoever, knowing the same to have been stolen, every such person shall, on conviction (B, C, D, E, F,) upon the oath of one witness, or his own confession, before two justices, forfeit for the first offence any sum not exceeding 30*l.* nor less than 20*l.*, as to such justices shall seem meet, together with the charges previous to and attending such conviction, to be ascertained by such justice (*a*) before whom the offender shall be convicted; and if not forthwith paid, the said justices shall commit the offender to the common gaol or house of correction for any time not exceeding twelve calendar months, nor less than six, or until the penalty and charges shall be paid; and if any person, having been convicted as aforesaid, shall afterwards be guilty of the like offence, and shall be thereof convicted in like manner as aforesaid, every such person shall forfeit not exceeding 50*l.* nor less than 30*l.*, as to such justices shall seem meet, together with the charges previous to and attending such conviction, to be ascertained by such justices before whom the offender shall be convicted; which said penalties, or any of them, when recovered, shall be paid half to the informer and half to the poor; and upon non-payment thereof such justices shall commit the offender to the common gaol or house of correction, there to remain without bail or mainprize, for any time not exceeding eighteen months, nor less than twelve, or until the penalty and charges shall be paid; and such justices shall also order the offender to be publicly whipped within three days after such commitment, in the town wherein such gaol or house of correction shall be, between the hours of twelve and one of the clock.

(B.) (C.) (D.) (E.) (F.)

(*a*) *Sic.* Quær e justices.

§ 2. And one justice, on information (G) to him made, may grant a warrant (H) to search for any dog stolen as aforesaid; and in case any such dog, or the skin thereof, shall upon such search be found, to take and restore such dog or skin to the owner thereof; and the person or persons in whose custody or possession such dog or skin shall be so found (in case it shall appear that such person was privy to such dog having been stolen, or that such skin was the skin of any dog stolen as aforesaid), shall be subject and liable to the like

(G.) (H.)

10 G. 3. c. 18.

penalties and punishments, as persons convicted of stealing any dog are herein before made subject and liable to.

§ 3. And for the more easy conviction of offenders, the justices may cause the conviction to be drawn up in the following form, or to the same effect, as the case may happen:

Form of conviction.

Be it remembered, that on the ——— *day of* ———, *in the year of our Lord* ———, A. B. *is convicted before us,* ——— *of his majesty's justices of the peace for the county of* ——— (specifying the offence, and the time and place when and where the same was committed, as the case shall be). *Given under our hands and seals the day and year aforesaid.*

Appeal.

§ 4. Provided, that if any person shall think himself aggrieved by any thing done in pursuance of this act, such person may appeal to the next general quarter sessions for the county or place within four days after the cause of complaint shall have arisen; such appellant giving fourteen days' notice at least in writing of his intention to appeal, and of the matter thereof, to the person whose acts are complained against; and within two days after such notice, entering into a recognisance before a justice, with two sureties, conditioned to try such appeal, and abide the order of and to pay such costs as shall be awarded by the justices at such quarter session; and the said justices at such session, on proof of such notice and recognisance, shall hear and finally determine the appeal in a summary way, and award such costs to the parties appealing or appealed against, as they shall think proper; and their determination shall be final; and no order or other proceedings touching the conviction of any offender against this act shall be quashed for want of form, or be removed by *certiorari*, or other writ, into any of H. M.'s courts of record at *Westminster*.

Difficulties upon the statute.

[Here seem to be some difficulties upon this act: as,

(1) With regard to the *offence; If any person shall steal any dog or dogs.* It is not a mere cavil, in a case where a man's property or liberty is so considerably affected, to surmise, that it may be doubtful whether upon this act it is penal to steal a *bitch.* (*a*) In the case of *horse stealing,* the act runs, *any horse, mare,* or *gelding;* and it is not usual, where a man has stolen a *mare,* to indict him for stealing a *horse.* And so tender is the law in these matters, that when by stat. 1 *Ed.* 6. *c.* 12. it was enacted, that no person or persons convicted of stealing horse*s*, mare*s*, or gelding*s*, should be admitted to the benefit of clergy, this was not thought sufficient to exclude from the said benefit any person who should steal only *one*-horse, mare, or gelding; but an explanatory act (2 & 3 *Ed.* 6. *c.* 33.) was thought necessary for that purpose. And it may be argued that in a case so penal the statute shall not be extended further than the words will strictly bear.

(2) With respect to the *penalties:* As the clause stands, there may be a doubt concerning the application of the forfeitures for the first offence; for though it is said, that the said forfeitures, or *any of them,* shall be paid half to the informer and half to the poor, yet in the very next words following, it is said, that on non-payment thereof the justices shall commit the offender for any

(*a*) See a note by Mr. *Christian* on this subject. 4 *Blac. Com.* 236.

time not exceeding eighteen months nor less than twelve, which words are only applicable to the penalty for a second or other subsequent offence.—In like manner it seems doubtful whether the *whipping* shall be understood for the first or only for a subsequent offence. Also the special *time* of whipping is not clearly ascertained, being only *between the hours of twelve and one of the clock*, which may be either in the morning soon after midnight, or in the afternoon.—There is also a small mistake, where it is said, that the charges of conviction shall be ascertained by the *justice* before whom the offender shall be convicted; whereas the conviction must be by *two* justices.

10 G. 3. c. 18.

(3) The clause concerning the *appeal* seems inconsistent, or otherwise unintelligible. The appeal must be *to the next general quarter sessions, within four days after the cause of complaint shall arise, and of this fourteen days' notice shall be given to the person whose acts are complained against.*——Whatever these words may signify, the imprisonment is still going on: for if the forfeiture is not *forthwith* paid, the offender shall be committed: and at all events, the *whipping* will be over before the appeal can commence.]

R. v. Helps.

R. v. *Helps*, 3 *M.* & *S.* 331. A commitment for dog stealing directed to the constable and the governor of the house of correction *Coldbath-fields*, was returned upon a *habeas corpus*, to the effect following:—"*Middlesex* (ss). Whereas *Bryan Helps*, late of the parish of *Paddington*, in the county of *Middlesex*, came before us, *P. N.* and *G. F.* two of H. M.'s justices of the peace in and for the said county, and was charged, and convicted before us the said justices, at *Marlborough-street*, in the said county, on the 1st of *June*, 1814, upon the oaths of *J. Wilson* and others, of having on the 16th of *May* 1814, at the parish of *Paddington*, in the said county, unlawfully stolen a certain dog of the spaniel kind, the property of the said *I. W.*, from one *J. T. G.*, being a person entrusted by the said *I. W.*, the owner thereof, with the said dog, contrary to a certain act of parliament, &c. (*a*), for which offence, we the said two justices did order and adjudge the said *B. Helps* to forfeit and pay the sum of 30*l.* of lawful money, &c. *to be applied in such manner as the law directs*, and which the said *B. Helps* did neglect and refuse to pay, and did enter into a recognisance before us the said justices with two sufficient sureties for his personal appearance at the then next general quarter sessions of the peace to be holden for the said county of *Middlesex*, then and there to prosecute his appeal with effect to the said conviction, and to abide the order of, and pay such costs as should be awarded by the justices at such quarter sessions, and at which said quarter sessions, the appeal of the said *B. Helps* was heard, and what was alleged by the respective parties, their counsel, and witnesses, in and concerning the premises, and it was ordered by the court that the said conviction be, and the same was then and there affirmed; and it was further ordered, that the said *B. Helps* should forthwith pay or cause to be paid unto *John Tapper* the informer in that behalf 6*l.* 6*s.* for the costs and charges by him incurred in defending the said appeal, which said penalty of 30*l.* the said *B. Helps* doth neglect and refuse to pay, or cause to be paid, and also doth neglect and refuse to pay the said sum of 6*l.* 6*s.*, thereby disobeying the order of the said court: These are therefore, in H. M.'s

(*a*) 10 G. 3. c. 18.

R. v. Helps. name to command you, the said constable to take, &c. and you the said governor to receive the body of the said *B. Helps* into your custody, and him safely keep without bail or mainprize for six calendar months, or until the said penalty of 30*l.* shall be paid, &c. Dated the 4th of *Nov.* 1814, under the hands and seals of the said justices." — Exception was taken to this commitment, that as the statute directs the penalty to be paid, one moiety to the informer, and the other moiety to the poor of the parish where the offence shall be committed, it should have been shewn by the conviction who is the informer; and then the adjudication that the penalty should be applied as the law directs would according to *Regina* v. *Barlett, Salk.* 383., have been well enough. But *R.* v. *Seale,* 8 *East,* 568., has decided, that if the person to whom any proportion of the penalty is given be not ascertained in the conviction, it is ill. Also the justices should have adjudged in the conviction that if the penalty were not forthwith paid, the offender should be committed, &c. for so the statute directs: and it was said by the Court in *R.* v. *Dimpsey,* 2 *T. R.* 96., that a judgment is an entire thing, and one part of it cannot be given at one time, and another at a subsequent time; but here the justices have waited to make one part of their adjudication until after the appeal. — In support of the commitment it was contended, That the defect if it were one of not naming the informer in the conviction, was cured by a subsequent part of this commitment, which points out who the informer is: for it directs the defendant to pay six guineas to the informer. Therefore, taking the whole commitment together, both the informer and the parish to whom the penalty is given are ascertained, and if so, the justices adjudging the penalty to be applied as the law directs is *ex concessis* sufficient. And the answer to the other objection is, that the defendant is not committed upon the original conviction until after the appeal, and must have been summoned again — It was urged in reply, that to warrant a commitment there must be a lawful conviction, for though the statute as to the conviction takes away a *certiorari,* yet the commitment must contain lawful cause. And in Dr. *Groenvelt's* case, 1 *Ld. Raym.* 213., it was resolved, "that the cause of commitment ought to be certain, to the end that the party may know for what he suffers, and how he may regain his liberty." But if the conviction do not point out the informer, how can the party know to whom he is to pay the penalty and regain his liberty? And the conviction cannot be helped by matter *dehors;* so that the informer being named in a subsequent part of this commitment will not remedy it. — Ld. *Ellenborough* C. J. said, if the conviction formed a stage of this proceeding at which we were to stop, in order to look into its sufficiency or insufficiency, I should probably be of opinion that it ought to point out the informer. But we cannot consider the case upon the conviction; the statute has taken away the *certiorari;* we cannot intend that the original did not contain something more; we can only look to this ultimate proceeding. Looking, then, at that alone which is before us, we find when we come to the affirmance of the conviction upon appeal, that it does appear with sufficient certainty who the informer is. By the ultimate adjudication both the parish and the name of the informer are supplied. *Le Blanc* J. said, I think the offender has notice upon the whole commitment who is the informer and which is the parish to whom the

penalty is to be paid. *Bayley* J. said, this is not a commitment which in itself comprises the conviction of the offender, but the commitment recites some other conviction. And in that recital it is not necessary that every thing should be stated which is requisite in the conviction itself: therefore, when the recital states that he was convicted in a penalty, to be applied in such manner as the law directs, that is perfectly consistent with its being more particularly specified in the conviction itself to whom the penalty is to be distributed. Prisoner remanded.

A. Indictment for keeping a Mastiff unmuzzled.

A.

County of ——— to wit. } *THE jurors for our lord the king upon their oath present, that* A. O., *late of the parish of* ———, *in the said county,* ——— *on the* ——— *day of* ———, *in the* ——— *year of the reign of our sovereign lord* George *the fourth, of the united kingdom of* Great Britain *and* Ireland, *king, defender of the faith, and on divers other days and times between that day and the day of the taking of this inquisition, at the parish aforesaid in the county aforesaid, near unto the king's common highway, there unlawfully did keep and still doth keep, a certain large dog of a fierce and furious nature; and the said dog, on the said* ——— *day of* ———, *in the year aforesaid, and on the said other days and times, at the parish aforesaid, in the county aforesaid, near unto the said highway there unlawfully did permit and suffer and still doth permit and suffer to go unmuzzled and at large, by reason whereof the liege subjects of our said lord the king, on the said* ——— *day of* ———, *in the year aforesaid, and on the said other days and times, at the parish aforesaid, in the county aforesaid, could not nor can they now go, return, pass, and labour in and through the said highway there, without great danger and hazard of being bit, maimed, and torn by the said dog, and losing their lives, to the great damage, terror, and common nuisance of all the liege subjects of our said lord the king, in, by, and through the said highway there going, returning, passing, repassing, and labouring, to the evil example of all others in the like case offending, and against the peace of the said lord the king, his crown and dignity.*

B. Information for stealing a Dog on stat. 10 G. 3. *c.* 18. § 1. *ante*, p. 919. [See *Y. C. P.* 85.]

B.

County of ——— to wit. } *THE information and complaint of* A. I. *of* ———, *in the county of* ———, *esquire, made before* J. P. *and* K. P., *esquires, two* [or, if before one justice according to stat. 3 *G.* 4. *c.* 23. § 2. *ante*, p. 731., to summon before two justices, then say, *me*, J. P., *esquire, one*] *of his majesty's justices of the peace, in and for the said county of* ———, *this* ——— *day of* ———, *A. D.* 18—. *Who says that the said* A. O. *of* ———, *in the said county, tinker, on the* ——— *day of* ——— *last, did steal from the said* A. I. *a certain dog, to wit, a liver colour and white pointer, the property of the said* A. I. [or, *the said* A. I. *being entrusted with the said dog by* ———, *the owner thereof*], *contrary to the statute. Whereby he the said* A. O. *has forfeited the sum of* ——— *pounds to be distributed as the act directs. And thereupon he the said* A. I. *prays that the said* A. O. *may be summoned to*

answer the premises before two of his majesty's justices of the peace for the said county of ———, and that the said penalty may be applied in such manner as the law directs. Exhibited before us [or, *me*], *the day and year above-written.*

C.

C. Information on the same act for receiving, harbouring, &c. a Dog, knowing it to have been stolen.

County of ——— to wit. } *THE information and complaint of* A. I. *of* ———, *in the county of* ———, *esquire, made before* J. P. *and* K. P., *esquires, two* [or, if before one justice, according to stat. 3 *G.* 4. *c.* 23. § 2. to summon before two justices, then say, *me*, J. P., *esquire, one*] *of his majesty's justices of the peace, in and for the said county of* ———, *this* ——— *day of* ———, *A. D.* 18—. *Who says that the said* A. O. *of* ———, *in the said county, tinker, on the* ——— *day of* ——— *last, did receive, harbour, detain, and keep a certain dog, to wit, a liver colour and white pointer the property of the said* A. I. [or, *the said* A. I. *being entrusted with the said dog, by* ——— *the owner thereof*], *contrary to the statute. Whereby he the said* A. O. *has forfeited the sum of* ——— *pounds, to be distributed as the act directs. And thereupon he the said* A. I. *prays that the said* A. O. *may be summoned to answer the premises before two of his majesty's justices of the peace for the said county of* ———, *and that the said penalty may be applied in such manner as the law directs. Exhibited before us* [or, *me*], *the day and year above-written.*

D.

D. Order to pay the penalty for stealing a Dog when the offender does not appear upon summons. [See *Y. C. P.* 86.]

County of ——— to wit. } *WHEREAS upon the information and complaint in writing of* A. I. *of* ———, *in the county of* ———, *esquire,* A. O. *of* ———, *in the said county, tinker, has been duly summoned to appear before us* J. P. *and* K. P., *esquires, two of his majesty's justices of the peace, in and for the said county, this present day, for that the said* A. O. *on the* ——— *day of* ——— *last, in the year of our Lord* 18—, *did steal from him the said* A. I. *a certain dog, to wit, a liver colour and white pointer, the property of the said* A. I. [or, *the said* A. I. *being entrusted with the said dog by* ———, *the owner thereof*], *contrary to the statute whereby he the said* A. O. *hath forfeited the sum of* ——— *pounds, to be distributed as the act directs. And whereas the said* A. O. *having been summoned as aforesaid to appear before us as aforesaid, has neglected to appear according to the said summons, and has not shewn any cause why he should not pay the said forfeiture, and on the contrary hath been and is duly convicted before us the said justices of so stealing the said dog, upon the oath of* A. W., *a credible witness, whereby he the said* A. O. *hath forfeited the sum of* ——— *pounds, as aforesaid* [*and which we have mitigated to* ——— *pounds*, if such be the case]: *We do therefore hereby order that he the said* A. O. *upon due notice hereof do pay or cause to be paid unto unto* I. S. *the said mitigated sum of* ——— *pounds, to be by the said* I. S. *distributed as the act directs,* (a) *and also that he the said* A. O. *do pay unto the said* I. S. *the further sum of* ——— *pounds, for the charges attending the said information and conviction. Given under our hands and seals, this* ——— *day of* ———, *A. D.* 18—.

(*a*) See as to these words, 2 *T. R.* 18.

E. Conviction on Stat. 10. *Geo.* 3. *c.* 18. for stealing a Dog. E.

County of ——— to wit. *BE it remembered, that on the* ——— *day of* ———, *in the year of our Lord* 18—, A. O. *is convicted before us* W. S. *and* S. P., *esquires, two of his majesty's justices of the peace in and for the said county of* ———, *for that he the said* A. O. *within* ——— *months now last past, to wit on the* ——— *day of this present month of* ———, *in the said year of our Lord* 18—, *at the parish of* ———, *in the said county, unlawfully and against the form of the statute, did steal one spaniel dog the property of* C. D. *of* ———, *gentleman. Given under our hands and seals, &c.* W. S.
S. P.

F. Conviction on the same Act, for receiving a Dog knowing it to have been stolen. F.

County of ——— to wit. *BE it remembered, that on the* ——— *day of* ——— *&c.* A. O. *is convicted before us* W. S. *and* S. P., *esquires, two &c., for that he the said* A. O. *on &c. at &c. unlawfully and against the form of the statute in this behalf made and provided, did receive, harbour, detain, and keep one spaniel dog, the property, &c. he the said* A. O, *well knowing the said dog to have been stolen. Given, &c.*

G. Information before one Justice to ground a Search Warrant. G.

Staffordshire to wit. *BE it remembered, that on the* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———, *at* ———, *in the said county of* ———, A. B. *yeoman in his proper person cometh before me* S. P., *esquire, one of his majesty's justices of the peace in and for the said county, and upon his oath before me the said justice deposeth and saith, that he has lately lost a terrier dog of a black and tan colour, and that he hath cause to suspect and doth suspect that* C. D. *of* ——— *aforesaid, did steal the same, and that the skin of the said dog is now concealed in the dwelling-house of the said* C. D. *at* ———, *in the parish of* ———, *and said county.* A. B.
Exhibited before me upon oath, this ——— *day of* ———, *one thousand eight hundred and* ———.
S. P.

H. Search Warrant upon the foregoing Information. H.

County of ——— to wit. AFTER reciting the complaint as stated in the information, proceed thus:—*These are therefore to command you to make diligent search for the said dog-skin, in the said dwelling-house of the said* A. B., *and if you shall find it therein, then that you bring the same before me at this place, and also cause the said* A. B. *to come before me, and* C. G., *clerk, one other of his majesty's justices of the peace in and for the said county, at this place to-morrow morning at eleven o'clock, to answer the said complaint and to make defence thereto, and to be dealt with according to law. Given, &c.*

Sir John Fielding, in his Observations on the Penal laws, page 291. "recommends it to all persons to put brass or steel collars on their dogs' necks, with the name and place of abode of their owners, and to fasten them with a padlock; for the stealing such collars being felony, it will facilitate the punishing of the offender; and the dog when found is recoverable by action.'

Door, breaking open. See Arrest, *ante*.
Dower. See Forfeiture, Vol. II.
Drunkenness. See Alehouses, *ante*.
Duelling. See Homicide, Vol. II.

Egyptians.

[22 H. 8. c. 10. 1 & 2 P. & M. c. 4. 5 El. c. 20. 1 G. 4. c. 116.]

Gypsies.

THESE are a strange kind of commonwealth among themselves, of wandering impostors and jugglers, who made their first appearance in *Germany* about the beginning of the sixteenth century, and have since spread themselves all over *Europe* and *Asia*. They were originally called *Zinganees* by the *Turks*, from their captain, *Zinganeus*, who, when Sultan *Selim* conquered *Egypt*, about the year 1517, refused to submit to the *Turkish* yoke, and retired into the deserts, where they lived by rapine and plunder, and frequently came down into the plains of *Egypt*, committing great outrages in the towns upon the *Nile*, under the dominion of the *Turks*. But being at length subdued and banished from *Egypt*, they dispersed themselves in small parties into every country in the known world; and, as they were natives of *Egypt*, a country where the occult sciences, or black art, as it was called, was supposed to have arrived to great perfection, and which, in that credulous age, was in great vogue with persons of all religions and persuasions, they found the people, wherever they came, very easily imposed on. *Mod. Univ. Hist.* vol. xliii. p. 271.

In the compass of a very few years, they gained such a number of idle proselytes, who imitated their language and complexion, and betook themselves to the same arts of chiromancy, begging and pilfering, that they became troublesome, and even formidable to most of the states of *Europe*. Hence they were expelled from *France* in the year 1560, and from *Spain* in 1591. And the government in *England* took the alarm much earlier; for in 1530, they are described by the statute of the 22 *H.* 8. *c.* 10. as "outlandish people, calling themselves *Egyptians*, using no craft or feat of merchandize, who have come into this realm, and gone from shire to shire, and place to place, in great company, and used great subtil and crafty means to deceive the people; bearing them in hand, that they by palmestry could tell men and women fortunes; and so, many times by craft and subtilty have deceived the people of their money, and also have committed many heinous felonies and robberies." Wherefore they are directed to avoid the realm, and not to return, under pain of imprisonment and forfeiture of their goods and chattels: and, upon their trials for any

Description of, 22 H. 8. c. 10.

felony which they may have committed, they shall not be entitled to a jury *de medietate linguæ*. And afterwards it is enacted by stat. 1 & 2 *P. & M. c.* 4., and 5 *El. c.* 20., that if any such persons shall be imported into this kingdom, the importer shall forfeit 40*l*. And if the *Egyptians* themselves remain one month in this kingdom; or if any person being fourteen years old, whether a natural born subject or stranger, which hath been seen or found in the fellowship of such *Egyptians*, or which hath disguised him or herself like them, shall remain in the same one month at one or several times, it is felony without benefit of clergy. And Sir *Matthew Hale* informs us, that at one *Suffolk* assizes no less than thirteen gypsies were executed upon these statutes a few years before the Restoration. But, to the honour of our national humanity, there are no instances more modern than this, of carrying these laws into execution. (4 *Blac. Com.* 166.) And by stat. 23 *G.* 3. *c.* 51. the said stat. 5 *El. c.* 20. is repealed. And now by stat. 1 *G.* 4. *c.* 116., after reciting that whereas by stat. 1 & 2 *P. & M. c.* 4. *supra*, it is, amongst other things, enacted, that if any of the persons called *Egyptians* which shall be transported and conveyed into this realm of *England* or *Wales*, do continue and remain within the same by the space of one month, that then he or they so offending shall, by virtue of this act, be deemed and judged a felon and felons, and shall therefore suffer pains of death, loss of lands and goods, as in cases of felony, by the order of the common law of this realm, and shall, upon the trial of them or any of them therein, so tried in the county, and by the inhabitants of the county or place where they or he shall be apprehended or taken, and not *per medietatem linguæ*, and shall lose the benefit and privilege of sanctuary and clergy, enacts that so much of the said act as is herein-before recited shall be, and the same is hereby repealed.

1 & 2 P. & M. c. 4.
5 Eliz. c. 20.

5 Eliz. c. 20. repealed by 23 G. 3. c. 51.

1 G. 4. c. 116. repealing so much of 1 & 2 P. & M. c. 4. as inflicts capital punishment.

Embezzlement. See Cheat, *ante*.
Embracery. See Maintenance, Vol. III.

Emigration.

THE statute now in force regulating the number of passengers and the quantity of provisions, water, &c., to be taken out by ships carrying emigrants to any foreign place out of Europe not within the streights of Gibraltar, is stat. 4 *G.* 4. *c.* 84. which by § 1. repeals stats. 43 *G.* 3. *c.* 56., 53 G. 3. *c.* 36., 56 *G.* 3. *c.* 83., c. 114., and 57 *G.* 3. *c.* 10.

Escape.

See tit. Rescue, Vol. V.

THIS is to be understood of escapes in *criminal* cases; and not in *civil* cases, as for debt, or the like.

An escape is, where one that is arrested gaineth his liberty before he is delivered by the course of law. *Terms of the L.*

Escape, what.

Several kinds thereof.

Escapes are of three kinds. 1. By a person who hath the offender in his custody; this is properly called an *escape*. 2. Caused by a stranger; this is commonly called a *rescue*. 3. By the party himself, either without force, which is simply an escape, or with force, which is *prison breaking*. *Rescous and prison breaking* are treated of under their respective titles: and this title treats only of escapes properly so called. Concerning which we will treat in the following order.

I. Of Escape by the Party himself.

Escape by party himself.

As all persons are bound to submit themselves to the judgment of the law, and to be ready to be justified by it, whoever in any case refuses to undergo that imprisonment which the law thinks fit to put upon him, and frees himself from it by any artifice before such time as he is delivered by due course of law, is guilty of an high contempt, punishable with fine and imprisonment. 2 *Haw.* c. 17. § 5. 4 *Blac. Com.* 129.

But escape, committed by the party himself, belongs more properly to the title Prison Breaking, Vol. III.

44 G. 3. c. 92. Persons escaping from G. B. to Ireland, or from Ireland to G. B. to be apprehended and brought back again.

By stat. 44 *Geo.* 3. *c.* 92. § 3. Offenders against whom any warrant shall be issued, escaping from *Ireland* into *England*, or *Scotland*, may be apprehended by an indorsed warrant, and conveyed to *Ireland*, and the fourth section of the act makes the same provision as to offenders escaping from *England* or *Scotland* into *Ireland*, being apprehended and conveyed back again to *England* or *Scotland*.

The apprehension of persons escaping from *England* into *Scotland*, and from *Scotland* into *England*, is provided for by stat. 13 *Geo.* 3. *c.* 31. And as to admitting persons apprehended in *England*, *Scotland*, and *Ireland*, to bail, for bailable offences, see statutes 45 *Geo* 3. *c* 92., and 54 *Geo.* 3. *c.* 186. which latter stat.

54 G. 3 c. 186.

§ 2. enacts that all warrants issued in *England*, *Scotland*, or *Ireland*, respectively, may and shall be indorsed and executed, and enforced and acted upon, in any part of the U. K., in like manner as is directed by stat. 13 *Geo.* 3. *c.* 31. in relation to warrants issued or granted in *England* and *Scotland* respectively, as fully as if all the provisions of the said act were made part of this act, as to every part of the U. K., and as to all justices of the peace, sheriff's officers, constables or other officer or officers of the peace in *Ireland*,

as well as in *England* and *Scotland* respectively. See also title Warrant, Vol. V.

II. Escape suffered by a private Person.

Escape by a private person.

It seems to be a good general rule, that wherever any person hath another lawfully in his custody, whether upon an arrest made by himself or another, he is guilty of an escape, if he suffer him to go at large before he hath discharged himself of him, by delivering him over to some other who by law ought to have the custody of him. 2 *Haw. c.* 20. § 1.

And the law is generally the same, in relation to escapes suffered by private persons, as by officers. *Id.*

III. Escape suffered by an Officer.

Escape by an officer.

There must be a previous arrest.

In order to make an escape there must be an *actual arrest*; and therefore if an officer, having a warrant to arrest a man see him shut up in a house, and challenge him as his prisoner, but never actually have him in his custody, and the party get free, the officer cannot be charged with an escape. 2 *Haw. c.* 19. § 1. 1 *Hale*, 594.

And justifiable.

The arrest must be also justifiable; for if it be either for a supposed crime, where no such crime was committed, and the party neither indicted nor appealed, or for such a slight suspicion of an actual crime, and by such an irregular mittimus as will neither justify the arrest nor imprisonment, the officer is not guilty of an escape, by suffering the prisoner to go at large. 2 *Haw. c.* 19. § 2.

And for a criminal offence.

And as the imprisonment must be justifiable, so it must be also for *a criminal offence*. *Id.* § 3.

And not detained only for fees.

The imprisonment must also be *continuing* at the time of the escape; and its continuance must be grounded on that satisfaction which the public justice demands for the crime committed. So that if a prisoner be acquitted, and detained only for his fees, it will not be criminal to suffer him to escape, though the judgment were that *he be discharged paying his fees*; he being detained, not as a criminal but only as a debtor: but if a person, convicted of a crime be condemned to imprisonment for a certain time, and also "until he pays his fees," and he escape after such time is elapsed, without paying them, perhaps such escape may be criminal, for it was part of the punishment that the imprisonment be continued till the fees should be paid. (*a*) 2 *Haw. c.* 19. § 4. 1 *Russ.* 531.

Too much liberty, an escape.

Also, it is an escape in some cases to suffer a prisoner to have greater liberty than by the law he ought to have; as to admit a person to bail, who by law ought not to be bailed, but to be kept in close custody. 2 *Haw. c.* 19. § 5.

So if a gaoler or other officer shall license his prisoner to go abroad for a time, and to come again, this is an escape, even though the prisoner return again. *Dalt. c.* 159.

Losing sight, an escape.

If the gaoler so closely pursue the prisoner who flies from him, that he retakes him without losing sight of him, the law

(*a*) By stat. 55 *G.* 3. c. 50. all fees payable by prisoners are abolished. See Vol. II. tit. Gaols, &c. § xi. p. 708.

looks on the prisoner so far in his power all the time, as not to adjudge such a flight to amount at all to an escape: but if the gaoler once lose sight of the prisoner, and afterwards retake him, he seems in strictness to be guilty of an escape. 2 *Haw.* c. 19. § 6.

But it must be by a known officer of the law. *T. Hill*, a yeoman wardour of the Tower, and *Dod*, the gentleman gaoler there, were indicted for the negligent escape of Colonel *Parker*, committed to the Tower for high treason. Lord *Lucas*, the constable of the Tower, had committed the Colonel to the care of the defendants, to be kept in the house of the defendant *Hill*. The judges present (*O. B. January*, 1694) were of opinion, that the defendants were not such officers as the law took notice of, and therefore could not be guilty of a negligent escape. It was merely a breach of trust to Lord *Lucas*, their master.

Upon the same principle, *S. Stick*, a wardour of the Tower, who was indicted at the same sessions for the negligent escape of Lord *Clancarty*, was acquitted.

But it is laid down, that whoever, *de facto*, occupies the office of a gaoler, is liable to answer for a *negligent escape*, and that it is no way material whether his title to the office be legal or not. 2 *Haw.* c. 19. § 28.

IV. What is a voluntary, and what a negligent Escape.

Voluntary escape, what.

Wherever an officer, who hath the custody of a prisoner, charged with and guilty of a capital offence, doth knowingly give him his liberty, with an intent to save him from his trial or execution, this is a voluntary escape. 2 *Haw.* c. 19. § 10.

Negligent escape, what.

A negligent escape is, when the party arrested or imprisoned doth escape against the will of him that arrested or imprisoned him, and is not freshly pursued and taken again before he hath lost the sight of him. *Dalt.* c. 159.

Suffering a prisoner to kill himself.

If the constable or other officer shall voluntarily suffer a thief, being in his custody, to go into the water to drown himself, this escape is felony in the constable, and the drowning is felony in the thief: Otherwise if the thief shall suddenly, without the assent of the constable, kill, hang, or drown himself, this is but a negligent escape in the constable. *Id.*

It appears to have been holden, that it is an escape in the constable to discharge a person committed to his custody by a watchman, as a loose and disorderly woman, and a street-walker, although no positive charge was made. *Rex* v. *Bootie*, 2 Burr. 864.

V. Concerning the Retaking of a Person escaped.

Let go voluntarily cannot be retaken.

If an officer hath arrested a man by virtue of a warrant, and then taketh his promise that he will come again, and so letteth him go, the officer cannot, after arrest, take him again by force of his former warrant, for that this was by the consent of the officer. But if he return, and put himself again under the custody of the officer, it seems that it may be properly argued that the officer

may lawfully detain him, and bring him before the justice in pursuance of the warrant. *Dalt. c.* 169. 2 *Haw. c.* 13. § 9.

Fresh suit.

But if the party arrested had escaped of his own wrong, without the consent of the officer, now, upon fresh suit, the officer may take him again and again so often as he escapeth, although he were out of view, or that he shall fly into another town or county, and bring him before the justice upon whose warrant he was first arrested. *Dalt. c.* 169. *p.* 405.

And it is said generally in some books, that an officer who hath negligently suffered a prisoner to escape may retake him wherever he finds him, without mentioning any fresh pursuit: and indeed since the liberty gained by the prisoner is wholly owing to his own wrong, there seems to be no reason he should take any manner of advantage from it. 2 *Haw. c.* 19. § 12.

Breaking open doors to retake.

And wherever a person is lawfully arrested for any cause, and afterwards escapes, and shelters himself in a house, the doors may be broken open to take him, on a refusal of admittance. 2 *Haw. c.* 14. § 9.

Retaking excuseth not the escape.

It is perhaps the better opinion that wherever a prisoner, by the negligence of his keeper, gets so far out of his power that the keeper loses sight of him, the keeper is punishable for the escape, notwithstanding he took him immediately after: And it is clear that he cannot excuse himself from an escape, by killing a prisoner in the pursuit, though he could not possibly retake him; but must in such case be content to submit to such punishment as his negligence shall appear to deserve. 2 *Haw. c.* 19. § 13.

Ryland v. *Lavender and Others, E.* 1824. 2 *Bing.* 65. Defendant, as gaoler, covenanted with the sheriff, among other things, to attend the quarter sessions, and to remove prisoners, under writs of *habeas corpus*, without permitting them to escape. The defendant being engaged at the quarter sessions, the sheriff, upon a writ of *habeas corpus* for the removal of a prisoner, directed his warrant to the defendant, and "*W. W.*, by me (the sheriff) for this time only thereto specially appointed." *W. W.*, who was the defendant's turnkey, proceeded with the prisoner towards the place of destination. The prisoner having escaped, the court of C. P. held that the sheriff having specially directed the warrant to *W. W.*, the defendant was not liable upon his covenant.

VI. Indictment for an Escape.

Indictment. (A)

It seems clear that every indictment (A) for an escape, whether negligent or voluntary, must expressly shew that the prisoner was actually in the defendant's custody for such a crime, and that he went at large. And if for a voluntary escape, that the defendant feloniously and voluntarily suffered him to go at large; and it must set forth, not the felony in general, but the particular kind of felony: but it seems questionable, whether such certainty, as to the nature of the crime, be necessary in an indictment for a negligent escape; for that it is not material in this case, whether the person who escaped were guilty or not. 2 *Haw. c.* 19. § 14.—*c.* 25. § 66.

VII. Trial and Conviction for an Escape.

Gaoler not producing him, a conviction.

If the prisoner be of record in a court, and the gaoler being called cannot give an account where he is, this is a conviction of an escape; but seems not a conviction of a voluntary escape, unless the gaoler confesseth it: And the gaoler may be fined in such a case. 1 *Hale*, 603.

Felony to be tried before the escape.

And it seems to be clear, that a keeper who voluntarily suffers another to escape who was in his custody for felony, cannot be arraigned for such escape as for felony until the principal be attainted, for that the felony of the prisoner shall not be tried between the king and the keeper, because the prisoner is a stranger thereunto; yet he may be indicted and tried for it as a misprision before the attainder of the principal offender. 2 *Haw.* *c.* 19. § 26. 2 *Inst.* 591, 592.

VIII. Punishment of an Escape.

Punishment of escape before arrest.

If a felon escape before arrest, it is not punishable in him as felony; but for the flight he forfeits his goods when presented. *Hale's Sum.* 111.

Of escape by a private person.

If a private person arrest a felon, and he escape by force from him, the township shall be amerced, but it seems it excuseth the party, because he cannot raise power to assist him: but if a constable or other officer hath the custody of a prisoner, bringing him to the gaol, it seems that a simple escape by the rescue of the prisoner himself doth not wholly excuse him, because he may take sufficient strength to his assistance. 1 *Hale*, 601.

Of a negligent escape.

Wherever a person is found guilty upon an indictment or presentment of a negligent escape of a criminal actually in his custody, he is punishable by fine and imprisonment, according to the quality of the offence. 2 *Haw.* *c.* 19. § 31. — *c.* 20. § 6. 1 *Hale*, 600. 604.

And it seems to be the better opinion that the sheriff is as much liable to answer for a negligent escape suffered by his bailiff, as if he had actually suffered it himself; and that the court may charge either the sheriff or bailiff for such an escape; and if a deputy gaoler be not sufficient to answer a negligent escape, his principal must answer for him. 2 *Haw.* *c.* 19. § 29. *Rex* v. *Fell*, 1 *Ld Raym.* 424.

Note. Mr. *Hawkins*, although he is one of the most accurate of all writers, yet hath inserted in this place certain penalties for escapes, which were expired above 200 years before. 2 *Haw.* *c.* 19. § 34, 35.

Prisoner breaking gaol.

If a prisoner for felony break the gaol, this seems to be a negligent escape in the gaoler, because there wanted either that due strength in the gaol, that should have secured him, or that due vigilance in the gaoler or his officers to have prevented it; and therefore it is lawful for the gaoler to hamper them with irons to prevent their escape; for if gaolers might not be punished for this as a negligent escape, they would be careless either to secure their prisoners, or to retake them that escape. 1 *Hale*, 601.

Gaoler may iron prisoners.

Of a voluntary escape.

It seems to be generally agreed that a voluntary escape suffered by an officer amounts to the same kind of crime and is punishable

in the same degree as the offence of which the party was guilty, and for which he was in custody; whether it be treason, felony, or trespass. 2 *Haw.* c. 19. § 22. (a)

But yet a voluntary escape is no felony, if the act done were not felony at the time of the escape made, as in case of a mortal wound given, and the party not dying till after the escape; but the officer may be fined to the value of his goods. *Dalt.* c. 159.

Also a voluntary escape suffered by one who wrongfully takes upon him the keeping of a gaol seems to be punishable in the same manner as if he was never so rightfully entitled to such custody; for that the crime is in both cases of the same ill consequence to the public; and there seems to be no reason that a wrongful officer should have greater favour than a rightful, and that for no other reason but because he is a wrongful one. 2 *Haw.* c. 19. § 23.

But it seemeth to be clear that no one is punishable as for felony for the voluntary escape of a felon, but the person only who is actually guilty of it; and therefore that the principal gaoler is only fineable for a voluntary escape suffered by his deputy; for that no one shall suffer capitally for the crime of another. *Id.* § 27.

And therefore, although in all civil causes the sheriff is to be responsible, or the gaoler, at election, yet if the gaoler do voluntarily suffer a felon in his custody to escape, this, inasmuch as it reacheth to life, is felony only in the gaoler that was immediately trusted with the custody, and not in the sheriff. 1 *Hale*, 597.

For the escape must be voluntarily permitted in him that permitted it, which could not be in the high sheriff, though it were such in the gaoler, for he was not privy to it, and therefore could not do it feloniously; but it was a negligent escape in him, in trusting such a person with the custody of his prisoners, that would be false to his trust, and therefore the sheriff shall pay, but not corporally suffer for the miscarriage of his gaoler. 1 *Hale*, 597, 598.

But although the felony for which a man is committed be not within clergy, yet the person who voluntarily suffers him to escape shall have the benefit of clergy. 1 *Hale*, 599.

5 G. 4. c. 13. Escape of offenders sentenced by a military court martial, and conditionally pardoned.

Stat. 5 *G.* 4. *c.* 13. § 13. (*The Mutiny Act*) enacts, that if any offender, under sentence of death by a court-martial, shall obtain a conditional pardon [*viz.* on transportation, see § 9.] all the laws in force touching the escape of felons under sentence of death, shall apply to such offender, and to all persons aiding, abetting, or assisting, in any escape or intended escape of any such offender, or contriving any such escape, from the time when an order [for his transportation, see § 9.] shall be made by a justice or baron, and during all the proceedings had for the purposes mentioned in the act.

37 G. 3. c. 140. As to those sentenced by a naval court-martial.

A former statute 37 *G.* 3. *c.* 140. § 6., contains a similar provision with respect to offenders under sentence of death by a naval court-martial, and allowed the benefit of a conditional pardon.

Stat. 52 *G.* 3. *c.* 156. provides against the aiding of the escape of prisoners of war, and enacts, that "every person who

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(a) If the cause be expressed in the commitment, 2 *Inst.* 52. See tit. Commitment, § III.

52 G.3. c.156. Persons aiding the escape of prisoners of war made liable to transportation.

shall knowingly and wilfully aid or assist any alien enemy of H.M., being a prisoner of war in H. M.'s dominions, whether such prisoner shall be confined as a prisoner of war in any prison, or other place of confinement, or shall be suffered to be at large in H. M.'s dominions, or any part thereof, on his parole, to escape from such prison or other place of confinement, or from H. M.'s dominions, if at large upon parole," shall upon conviction be adjudged guilty of felony, and be liable to be transported for life, or for 14 or 7 years. The act also declares (§ 2.) that every person who shall knowingly and wilfully aid or assist any such prisoner at large on parole, in quitting any part of H. M.'s dominions, where he may be on his parole, although he shall not aid or assist such person in quitting the coast of any part of H. M.'s dominions, shall be deemed guilty of aiding the escape of such person within the act. There is a further provision as to assisting such prisoners in their escape after they had got upon the high seas. § 3. enacts, " that if any person or persons owing allegiance to H. M., after any such prisoner as aforesaid hath quitted the coast of any part of H. M.'s dominions in such his escape as aforesaid, shall, knowingly and wilfully, upon the high seas, aid or assist such prisoner in his escape to or towards any other dominions or place, such person shall also be adjudged guilty of felony, and be liable to be transported as aforesaid." It is also provided that offences committed upon the high seas, and not within the body of any county, may be tried in any county within the realm. (a)

1 & 2 G.4. c.88. Punishment of persons rescuing persons charged with felony.

By stat. 1 & 2 *G.*4. *c.* 88. § 1. If any person shall rescue, or aid and assist in rescuing from the lawful custody of any constable, officer, headborough, or other person whomsoever, any person charged with, or suspected of, or committed for any felony, or on suspicion thereof, then if the person or persons so offending shall be convicted of felony, and be entitled to the benefit of clergy, and be liable to be imprisoned for any term not exceeding one year, it shall be lawful for the court by or before whom any such person or persons shall be convicted, to order and direct, in case it shall think fit, that such person or persons, instead of being so fined and imprisoned as aforesaid, (a) shall be transported beyond the seas for seven years, or be imprisoned only, or be imprisoned and kept to hard labour in the common gaol, house of correction, or penitentiary house, for any term not less than one and not exceeding three years.

(a) *Sic.*

IX. Aiding in attempting to Escape.

16 G.2. c.31. Aiding a prisoner convicted of treason or felony, or committed for these offences, in an

The mere aiding an attempt of persons confined to make an escape, though no escape should ensue, is made highly penal by stat. 16 *G.* 2. *c.* 31., which enacts, that if any person shall assist any prisoner to *attempt* his escape from any gaol, though no escape be actually made, if such prisoner were then attainted or convicted of treason or felony (except petty larceny), or lawfully committed

(a) By § 4, the act is not to prevent offenders from being prosecuted as they might have been, if the act had not been passed; but no person prosecuted otherwise than under the provisions of the act is to be liable to be prosecuted for the same offence under the act; and no person prosecuted under the act is, for the same offence, to be otherwise prosecuted.

to or detained in any gaol for treason or felony (except petty larceny), expressed in the warrant of commitment or detainer (*a*), he shall be guilty of felony, and be transported for seven years: and if such prisoner were then convicted of, committed to, or detained in gaol for petty larceny, or any other crime not being treason or felony, expressed in the warrant of commitment or detainer, or was then in gaol upon any process for debt, damages, costs, or sum of money, amounting to 100*l*., he shall be guilty of a misdemeanor, and be liable to fine and imprisonment. (See as to § 2. a *quære* p. 936.)

16 G. 2. c. 31. — attempt to escape.

Aiding, &c. a prisoner convicted or committed for petty larceny, &c.

By stat. 16 *G*. 2. *c*. 31. § 3. If any person shall assist any prisoner to attempt to escape *from any constable*, or other officer or person who shall have the lawful charge of him in order to carry him to gaol, by virtue of a warrant of commitment for treason or felony (except petty larceny), expressed on such warrant; or if any person shall assist any felon to attempt his escape from on board any *boat, ship, or vessel, carrying felons for transportation*, or from the *contractor* for the transportation of such felons, or his agents, or any other person to whom such felon shall have been lawfully delivered in order for transportation, he shall be guilty of felony, and be transported for seven years.

Assisting any person to escape from a constable, or from any boat carrying felons for transportation.

Felony.

All prosecutions on this act to be commenced within a year after the offence committed.

It has been decided that stat. 16 *G*. 2. *c*. 31. does not extend to cases where an *actual escape* is made, but must be confined to cases of *an attempt*, without effecting the escape itself. Mr. J. *Buller*, in delivering the opinion of the judges (*O. B. June*, 1796), observed, "the statute purports to be made for the further punishing of those persons who shall aid and assist persons attempting to escape, and makes the offence felony: it creates a new felony; but the offence of assisting a felon in making an actual escape was felony before, and therefore does not seem to fall within the view or intention of the legislature when they made this statute." *R*. v. *Tilley and others, O. B. April Sess.* 1795. 2 *Leach*, 662. See also *R*. v. *Burridge*, 3 *P. Wms*. 439. 1 *Hale*, 621. *R*. v. *Young and Chissell, Winchester Lent Ass.* 1801, *cor. Le Blanc* J. *MS. C. C. R.* — But *quære* if this act is not *entirely* repealed by stat. 4 *G*. 4. *c*. 64. § 1. (Vol. II. *tit.* Gaols, p. 679, 680.) as to all gaols not excepted in § 76. of that act. Vol. II. p. 681.

Stat. 16 G. 2. c. 31. does not extend to cases where an actual escape is made.

By stat. 4 *G*. 4. *c*. 64. § 43. "If any person shall convey or cause to be conveyed into any prison to which this act shall extend, any mask, vizor or other disguise, or any instrument or arms proper to facilitate the escape of any prisoners, and the same shall deliver or cause to be delivered to any prisoner in such prison, or to any other person there, for the use of any such prisoner, without the consent or privity of the keeper of such prison, every such person shall be deemed to have delivered such vizor or disguise, instrument or arms, with intent to aid and assist such prisoner to escape or attempt to escape; and if any

4 G. 4. c. 64. Conveying vizors, &c. into prisons to assist prisoners to escape.

(*a*) This has been held to mean "*clearly and plainly expressed*;" so that a case where the commitment is on suspicion only, is not within the act.—*Walker's case*, 1 *Leach*, 97. *Greeniff's case*, 1 *Leach*, 363. and *Gibbon's case*, 1 *Leach* 98. note (*a*) *S. P.*

4 G.4. c.64. Transportation for assisting prisoners to escape.

person shall, by any means whatever, aid and assist any prisoner to escape or in attempting to escape from any prison, every person so offending, whether an escape be actually made or not, shall be guilty of felony, and being convicted thereof, shall be transported beyond the seas, for any term not exceeding 14 years." [See a similar provision, stat. 16 *G.* 2. *c.* 31. § 2. *Quære* if repealed by stat. 4 *G.* 4. *c.* 64. § 1., Vol. II. p. 683. and see § 76. Vol. II. p. 681.]

Method of trial and conviction of offenders making escapes, &c.

§ 44. And, to the intent that prosecutions for escapes, breaches of prison, and rescues, may be carried on with as little trouble and expence as is possible, " any offender escaping, breaking prison, or being rescued therefrom, may be tried either in the jurisdiction where the offence was committed, or in that where he or she shall be apprehended and retaken; and in case of any prosecution for any such escape, attempt to escape, breach of prison, or rescue, either against the offender escaping or attempting to escape, or having broken prison, or having been rescued, or against any other person or persons concerned therein, or aiding, abetting, or assisting the same, a certificate given by the clerk of assize, or other clerk of the court in which such offender shall have been convicted, shall, together with due proof of the identity of the person, be sufficient evidence to the court and jury of the nature and fact of the conviction, and of the species and period of confinement to which such person was sentenced."

A.

A. Indictment against a Constable for an Escape.

County of ——— to wit. } *THE jurors for our lord the king upon their oath present, that on the ——— day of ———, in the ——— year of the reign of ———, at ———, in the county aforesaid, one* A. I. *of ———, came before* J. P., *esquire, then and yet one of the justices of our said lord the king, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed; and the said* A. I. *did, then and there, on his oath before the same justice, charge, accuse, and give information against one* A. O. *of ——— aforesaid, in the county aforesaid, yeoman, for a certain misdemeanor, in taking fish out of the pond of ———, at ———, in the said county,* [or as the offence shall be]: *Whereupon he the said* J. P. *the justice aforesaid, did then and there, to wit, at ——— aforesaid, in the county aforesaid, make a certain warrant, under his hand and seal, in due form of law, directed to the constable of ——— aforesaid, in the county aforesaid, thereby requiring him the said constable to take the body of the said* A. O. *and bring him before the said* J. P., *the justice aforesaid, to answer to such matters and things as should be alleged against him, touching the said misdemeanor; which said warrant afterwards, to wit, on the same day and year above-mentioned, at ——— aforesaid, in the county aforesaid, was delivered to one* A. C. *then being constable of ——— aforesaid, in due form of law to be executed; by virtue of which said warrant the said* A. C. *afterwards, to wit, on the said ——— day of ———, in the year aforesaid, at ——— aforesaid, in the said county, did take and arrest the body of the said* A. O., *and him the said* A. O. *in his custody for the cause aforesaid, had: Nevertheless, the said* A. C.

of ——— aforesaid, in the county aforesaid, yeoman, afterwards, to wit, on the said ——— day of ———, in the year aforesaid, the duty of his office in that respect not regarding, at ——— aforesaid, in the county aforesaid, unlawfully and negligently did permit the said A. O. to escape and go at large out of the custody of him the said A. C.; to the great hindrance of justice, in contempt of our said lord the king and of his laws, and against the peace of our said lord the king, his crown and dignity.

B. Warrant to apprehend a Person for escaping from the House of Correction.

County of ——— to wit. } To the constable of the parish of ———, in the said county of ———.

FORASMUCH as J. H. *keeper of the house of correction at ———, in the county aforesaid, hath this day made information and complaint before me, Sir* G. C. *bart., one of his majesty's justices of the peace acting in and for the said county of ———, that* A. O. *hath unlawfully and wilfully escaped from the house of correction at ——— aforesaid, and from and out of the custody of him the said* J. H., *the keeper thereof, before the expiration of a certain term for which he the said* A. O. *was ordered to be imprisoned and kept to hard labour therein. These are therefore to command you the said constable forthwith to apprehend and bring before me or some other of his majesty's justices of the peace for the said county, the body of the said* A. O., *to answer unto the said complaint, and to be further dealt with according to law. Herein fail you not. Given under my hand and seal this ——— day of ———, one thousand eight hundred and ———.*

G. C. (L. S.) (*a*)

Escheat. See Forfeiture, Vol. II.

Estray.

And herein also of Goods *waived.*

ESTRAY *is, where any horses, sheep, hogs, beasts, or swans, do come into a lordship, and are not owned by any man.* Kitch. 23.

Estray, what.

Where any horses, sheep, hogs, beasts, or swans.] *Bees* and other creatures of a wild nature are not within this description, and therefore not to be reckoned amongst stray goods. Nevertheless it seemeth that a swarm of bees, of which the owner hath lost sight, and consequently can make out no property, may be seized for the use of the king, or of the lord of the manor; for

(*a*) Vide 4 Chitt. Crim. L. 78.

it is a maxim of the common law, that such goods whereof no one can claim property do belong to the king; and that which the king hath he may grant to another, and consequently another may prescribe to have the same within such a precinct or lordship. And therefore it is said, that if any take honey or swarms of bees within the demesne of the lord, it is inquirable in the court baron. *Kitch.* 114.

Swans.] Swans that are unmarked and wild (being at large and abroad) may be seized by the sheriff for the use of the king, by his prerogative. *Dalt. Sher.* 80.

Also swans marked and tame may be estrays. *Kitch.* 86. But it seemeth that no other fowl can be estray. *Wood. b.* 2. *c.* 2.

Do come into a lordship.] That is, where the goods have no right to be; and therefore an estray cannot be in such place, where the party hath a right of common. *Dalt. Sher.* 79.

And are not owned by any man.] Whereupon (as hath been said) the property accrueth to the king; and the cattle of the king cannot be estrays, nor forfeited as such to the lord of the manor. *Kitch.* 81.

Waif, what.

Waif is, where a felon in pursuit waiveth the goods; or where the felon, for fear of being apprehended, thinking that a pursuit was made, having them with him in his possession, fleeth, and waiveth, casting away, or goeth from the goods; in these cases, they shall be said to be waived in law. But if he hath not the goods with him when he fleeth being pursued, or for fear to be apprehended, they are not waived nor forfeited, but the owner may take them when he will, without any fresh suit. 5 *Rep.* 109. *Dalt. Sher.* 78.

But if the thief in his flight waive them, there the goods are forfeited to the king or lord of the liberty by the common law, if the felon upon fresh suit were not attainted at the suit of the owner of the goods. And the reason why waif is given to the king, and that the party shall lose his property in such case, is for default in the owner, that he pursued not freshly to apprehend the felon; for it concerneth the public that crimes do not remain unpunished. Therefore the law hath imposed this penalty upon the owner, that if the thief by his industry and fresh suit be not attainted at his suit, in an appeal for the same felony, he shall lose for his default all his goods, which the thief at the time of his flight waived. But if the thief had them not with him when he fled, having peradventure hid them, there no default can be in the party; and therefore they shall not be forfeited, for if he maketh fresh suit after notice of the felony it sufficeth. 5 *Rep.* 109.

Seizure thereof by the lord.

Heretofore waifs and strays were the finder's, by the law of nature; and afterward, the king's by the law of nations. *Dalt. Sher.* 79.

Thus, one, as a bailiff or servant to the sheriff, seized a horse as an estray to the king's use, and proclaimed him according to law, and after the year and day sold him, and the sheriff accounted for him in the exchequer. *Id.* 80.

But now kings have granted this and such like prerogatives unto their subjects, within their liberties; so that waifs and strays are in many places the lord's of the franchise where they are found. *Dalt. Sher.* 79.

And therefore waived goods and estrays shall be *seized* by the officer of the king to the use of the king; or by the officer or bailiff of the lord, who hath such things by grant of the king, or by prescription, to the use of the lord. *Id.* 80.

But if one have a waif, and it be taken out of his manor, he shall have *trespass* without seizing, and though he do not seize it. *Kitch.* 81.

Proclaiming the goods seized.

It seemeth to be agreed that waifs and strays ought to be proclaimed in the two next market towns; and that if they be not proclaimed, the owner may take the stray goods again at any time. And it seemeth to be the general tenor of the old books, that they ought also to be proclaimed in the church: which course it seemeth best to follow; to the end that the owner, who in this case is no wrong-doer, may have reasonable mean to come at his goods again; that is to say, that the goods be proclaimed at the least thrice, to wit, in the two market-towns next adjoining to the place where they strayed on the market-days respectively, and at the church door on a *Sunday*, as the people come out of the church. *Kitch.* 23. 81. 105. *Dalt. Sher.* 79. *Cro. Eliz.* 716.

How waifs or strays are to be kept.

And they ought to be wreathed; and to be put into some several ground in an open place, and not in any covert of wood, that the owner may have a view of them; for if they be in covert the property is not changed, though they be there a year and a day. *Kitch.* 23.

An estray is not to be used in any manner, except in case of necessity, as to milk a cow or the like; but not to ride a horse, for within the year and day he hath not any property in him. *Cro. Jac.* 147, 148.

In *Oxley* v. *Watts*, 1 *T. R.* 12. it is determined, that an action of trespass lies for working a horse taken as an estray.

Owner claiming.

He who taketh an *estray* may keep it until he be satisfied for the finding, keeping, and proclaiming thereof. *Dalt. Sher.* 79.

But the owner (if it be within the year and day) may take it without telling any marks, or making any proof of property; but this may be done upon the trial, if contested. *Henly* v. *Walsh*, 2 *Salk.* 686.

The lord ought to make a demand of what the amends should be; and then if the party think the demand unreasonable, he may tender sufficient amends; and if the lord shall not accept it, this shall be settled by the jury upon trial.

But it is sufficient in this case to tender amends *generally*, without expressing any certain sum. For there is a difference between this case, and that of a tender of amends for trespass. In that of a trespass, if the defendant plead a tender of amends, he must shew what he tendered; for he must tender a certain sum. And the law puts this difficulty upon him because he is the wrong-doer: but the owner of the stray (as hath been said) is no wrong-doer: and it is impossible he should know how long his beast hath been in the lord's custody, nor how much will make a proper satisfaction. 2 *Salk.* 686.

In the case of goods *waived;* the owner may seize them twenty years after, if the lord of the franchise nor the king seized before; but if they are seized, then they become forfeited to the king, or the lord of the liberty. *Kitch.* 82.

And this forfeiture is not like a stray, where though the lord may seize, yet the party who is the owner may retake them within the year and day; but here the true owner cannot seize his own goods, though upon fresh suit within the year and day. 1 *Hale*, 541.

But this is not an absolute loss of the owner's goods, but rather an expedient settled by law to drive the owner to convict the felon by prosecuting his appeal; and therefore if he make fresh suit, and prosecute his appeal, and the felon be thereupon convict or attaint, and the fresh suit be inquired and found by verdict or inquest of office, he shall have restitution of the goods so waived. 1 *Hale*, 541.

Property accruing to the lord, upon not claiming.

Waifs and strays not claimed within the year and day, are the lord's. *Kitch.* 23. 80, 81.

For where the lord hath a beast a year and a day, and it be cried in the church and markets, the property is changed. *Kitch.* 80.

That is to say, after he hath had the beast a year and day from the time of the proclamation, and not from the time of the seizure; for after the first proclamation it becometh an estray, but not sooner. 11 *Mod.* 89.

If the estray within the year estray out of the manor, the lord may chase back the estray, unless it be seized by another lord who hath estrays; but if it be seized by such other lord, then the first hath lost all possibility of his gaining the property, and the other lord ought to proclaim it *de novo*. *Finch*, 177. *Kitch.* 81. *Hutt.* 67.

After seizure the lord shall be charged for trespass done by an estray. *Hutt.* 67.

And he shall have a replevin, if a stranger take it. *Hutt.* 67. Or trespass, *Winch.* 68.

Estreat.

[4 & 5 W. 3. c. 24. § 5.—3 G. 1. c. 15.—4 G. 3. c. 10.]

Estreat, what.

ESTREAT (*extractum*) is used for the true copy or note of some original writing or record, and especially of fines and amerciaments imposed in the rolls of a court, to be levied by the bailiff or other officer.

4 & 5 W. 3. c. 24.

By stat. 4 & 5 *W.* 3. *c.* 24. § 5. All clerks of assize, &c. upon delivery of their estreats, are to take the following oath before one of the barons of the exchequer:

Form of oath.

YOU shall swear, that these estreats, now by you delivered, are truly and carefully made up and examined, and that all fines, issues, amerciaments, recognisances, and forfeitures, which were set, lost, imposed, or forfeited, and in right and due course of law ought to be estreated in the court of exchequer, are, to the best of your knowledge and understanding, therein contained; and that in the same estreats are also contained and expressed all such fines as have been paid into the court, from which the said estreats are made,

without any wilful or fraudulent discharge, omission, misnomer, *or defect whatsoever :* So help you God.

Form of the Estreat.

Form of estreat.

Staffordshire. { *A TRUE and perfect estreat or schedule of all fines, issues, amerciaments, and recognisances, sum and sums of money paid or to be paid in lieu and satisfaction of the same, or any of them, and all other forfeitures whatsoever imposed, lost, or forfeited to our sovereign lord the king, at the assizes and general gaol delivery of our said lord the king, holden at* Stafford, *in and for the county of* Stafford, *on* ——, *the* —— *day of* ——, *in the* —— *year of the reign of our sovereign lord* George *the fourth, before the Honorable Sir* James Allan Park, *knight, one of the justices of our said lord the king, of his court of common pleas, the Honorable Sir* John Hullock, *knight, one of the barons of our said lord the king of his court of exchequer, and others their fellows, justices of our said lord the king, assigned to inquire of all treasons, felonies, and other offences committed within the county aforesaid, and also to hear and determine the same, and also before the same justices assigned to deliver the gaol for the said county of* Stafford *of the prisoners therein being.*

	£.	s.	d.
Of I. H., *esquire, sheriff of the said county, for a fine of three shillings and fourpence set on* A. O., *late of the parish of* ——, *in the county aforesaid, labourer, for a felony, whereof he was indicted and convicted, and which he paid to the said sheriff in court* - -	0	3	4
Of the same sheriff, for the fine of three shillings and four pence set on A. P., *late of the parish of* ——, *in the county aforesaid, farmer, for a nuisance there, whereof he was indicted and convicted, and which he paid to the sheriff in court* - - - -	0	3	4

(See 4 *Chitt. Crim. L* 185.)

And moreover, by stat. 3 *G.* 1. *c.* 15. § 12. Clerks of assize, &c. may be amerced for not returning their estreats by the barons of the exchequer.

3 G. 1. c. 15.

It is incumbent on persons under recognisance who, in consequence either of bills not having been found, or of none having been preferred, may not be called upon to answer or give evidence, to see that their appearance is recorded so as to enable the court to order his recognisance to be cancelled, as otherwise such an attendance is no attendance at all. Per *Thompson C. B. R.* v. *Miller the Younger*, 1808. 4 *Chitt. Cr. L.* 490, 491.

Duty of persons under recognisance.

By stat. 4 *G.* 3. *c.* 10. In order to relieve ignorant people, especially poor persons, whose recognisances as parties, or witnesses, have, by reason of their inattention, been estreated; it is enacted, that it shall be lawful for the barons of H. M.'s court of exchequer, upon affidavit and petition to be presented to them by or on the behalf of the person or persons imprisoned, or liable to be imprisoned, on the forfeiture of any such recognisances, to discharge such person or persons, by order from the said barons, without any *quietus* to be sued out for that purpose; for which order no

4 G. 3. c. 10. For discharging estreated recognisances.

4 G. 3. c. 10. more than 1*l.* and 1*s.* shall be taken by the officer appointed to give out the same: but no discharge shall be given on such petitions where any debt is due to the crown, other than by the recognisances so prayed to be discharged; nor in any cases of defrauding H. M.'s revenue by contraband trade, or assaulting H. M.'s officers of the customs or excise in the execution of their duty, or any person or persons lawfully assisting them therein.

N. B. The provisions of stat. 22 & 23 *Car.* 2. *c.* 22. which relate to "fines, issues, and amerciaments, forfeited recognisances, sum or sums of money paid or to be paid in lieu or satisfaction of them or any of them, imposed and adjudged at the quarter sessions of the peace," and of 4 & 5 *W.* & *M.* *c.* 24. which make the same perpetual, are now repealed by stat. 3 *G.* 4. *c.* 46.; and proceedings to be in future adopted for enforcing the payment of fines and forfeited recognisances before justices or the court of general or quarter sessions are directed by that act and by stat. 4 *G.* 4. *c.* 37. passed for amending it. See tit. Fines and forfeited Recognisances, Vol. II.

Clerks of estreat. As to the duty of the clerks of the estreats, see stat. 7 *H.* 4. *c.* 3.

Eves Droppers.

EVES droppers are such as listen under walls or windows, or the eves of houses, to hearken after discourse, and thereupon to frame slanderous and mischievous tales; are a common nuisance, and presentable at a court leet; or are indictable at the sessions, and are punishable by fine; and are to find sureties for their good behaviour. 4 *Blac. Com.* 168.

And *Dalton* says that *night walkers,* that eve drop men's houses or cast men's gates, carts, or the like into ponds, or commit other outrages or misdemeanors in the night, or shall be suspected to be pilferers or otherwise like to disturb the peace, or that be persons of ill-behaviour, or of evil fame or report generally, or that shall keep company with any such, or with any other suspicious person in the night, are liable to find sureties for their good behaviour.

Eves droppers are indictable at the sheriff's torn as well as other dangerous and suspicious persons. 2 *Haw. c.* 10. § 59. And it seems that a magistrate may also compel such persons to find surety for their good behaviour. 1 *Haw. c.* 61. § 4.

Evidence.

§ I. *Of Evidence in general.*
[29 C. 2. c. 3.—7 W. 3. c. 3.—5 G. 4. c. 94.]

II. *Of written Evidence.*
[1 Jac. 1. c. 11.—7 Jac. 1. c. 12.—5 G. 2. c. 30.—41 G. 3. (U. K.) c. 90.—52 G. 3. c. 146.—59 G. 3. c. 9.]

III. *Of the Evidence of Witnesses.*
[7 & 8 W. c. 34. — 1 Ann. st. 1. c. 18. — 8 G. 2. c. 16. — 27 G. 3. c. 29. — 31 G. 3. c. 35. — 46 G. 3. c. 37. — 54 G. 3. c. 170.]

IV. *Of the Manner of giving Evidence.*

V. *Of Process to cause Witnesses to appear.*
[5 El. c. 9.]

I. Of Evidence in general.

Evidence, what.

EVIDENCE in legal understanding doth not only contain matters of record, as letters patent, fines, recoveries, inrolments, and the like, and writings under seal, as charters and deeds, and other writings without seal, as court rolls, accounts, and the like; but in a larger sense it containeth also the testimony of witnesses, and other proofs to be produced and given, for the finding of any issue joined between the parties. And it is called *evidence*, because thereby the point in issue is to be made evident to the jury. 1 *Inst.* 283.

The best evidence is required.

But it is a general rule in all cases, civil and criminal, that the best evidence must be given, of which the nature of the thing is capable. *Gilb. Ev.* 13. *Bull. N. P.* 293.

The true meaning of this rule is, not that courts of law require the strongest possible assurance of the matter in question, but that no evidence shall be given, which from the nature of the thing supposes still greater evidence behind in the party's possession or power; for such evidence is altogether insufficient and proves nothing, but carries with it a presumption contrary to the intention for which it is produced. Thus if a party offer a copy of a deed or will, where he is able to produce the original, this raises a presumption, that there is something in the deed or will, which, if produced, would make against the party; and therefore the copy in such a case is not evidence. But if he prove the original deed or will to be in the hands of the adverse party, who refuses to produce it, although he has received a regular notice for that purpose, or that the original has been lost or destroyed without his default, no such presumption can reasonably be made, and a copy will be admitted, because then such copy is the best evidence that can be produced. *Bull. N. P.* 293. 1 *Phill. Ev.* 207. (*a*). See also *Williams* v. *The East India Company*, 3 *East.* 193. 201. and *R.* v. *Stoke Golding*, 1 *B. & A.* 173.

If a deed is attested by several subscribing witnesses, the execution may be proved by one of them; or if none of these witnesses can be produced, proof of the signature of one witness will be sufficient; for the proof is, as far as it goes, complete, and not inferior, in its kind, to any that can be produced. 1 *Phill. Ev.* 209.

5 G. 4. c. 94.

Again by stat. 5 *G.* 4. *c.* 94. Reciting that offenders against the laws relating to customs and excise have escaped, and difficulties have occurred in condemnations of seizures, by reason of the necessity of giving legal (*i. e.* the best) evidence in proceedings by order of the

(*a*) N.B. The sixth edition of Mr. Phillipps's Treatise on the Law of Evidence in 2 vols. is referred to throughout this Title.

5 G. 4. c. 94. commissioners of customs or excise, that such order had been actually made and issued by such commissioners respectively, it is enacted, that the averment of the fact in any information, &c. for recovery of any fine incurred under any acts relating to customs or excise, or for condemnation of any thing soever seized as forfeited, or forfeited under any such act, that such information, &c. is commenced by order of the said commissioners respectively, shall be sufficient evidence of the order having been made without other evidence thereof. See Vol. II. *tit.* Excise and Customs. § II. (*g*.) p. 68.

Presumptive evidence.

Many times, juries, together with other matter, are much induced by presumptions; whereof there are three sorts, violent, probable, and light or temerary. *Violent presumption* many times amounts to full proof; as if one be run through the body with a sword in a house, whereof he instantly dieth, and a man is seen to come out of that house, with a bloody sword, and no other man was at that time in the house. — *Probable presumption* moveth little; but *light* or *temerary presumption* moveth not at all. 1 *Inst.* 6. 3 *Blac. Com.* 371.

On an indictment for larceny, proof that a part of the stolen goods have been found upon the person of the prisoner, or in his house or possession, is presumptive evidence against him of his having stolen them, so as to call upon him for his defence; and may be sufficient to convict him, if no facts appear in evidence to repel that presumption. The goods are sometimes found in the prisoner's house before his apprehension, frequently found afterwards; and there can be no objection to proof of their being found at one time or the other; scarcely an Assize ever occurs, (as the court observed in *Watson's case*, 2 *Stark. N.P.* 139. where a question of this kind was suggested,) in which it does not happen that part of the evidence against a prisoner consists of proof, that the stolen property was found in his house *after* his apprehension. This kind of evidence is frequently strengthened materially by other circumstances, as by proof that about the time of the offence the prisoner was near the spot from which the goods were taken, or that he gave some false account respecting the goods on being charged with the crime, or endeavoured to conceal them, or perhaps tried to prevent an inspection, or by some other proof of suspicious circumstances in his behaviour. On the other hand, the inference, arising from the mere fact of possession, will be much weakened, if any considerable time has elapsed between the loss of the property and the finding of it again, or if the property was from its nature likely to pass in the interval through many hands; especially, where the prisoner betrayed no appearance of guilt at the time of his apprehension. 1 *Phill. Ev.* 157, 158. See 2 *East's P. C.* 656, 657.

Witnesses to a deed being dead.

So it is of a charter of feoffment, if all the witnesses to the deed be dead (as no man can keep his witnesses alive, and time weareth out all men), then violent presumption, which stands for a proof, is continual and quiet possession. Also the deed may receive credit from a comparing of seals, writing, and the like. 1 *Inst.* 6.

What number of witnesses are required.

The common law did not require any certain number of witnesses for the trial of any crime whatsoever. 2 *Haw. c.* 46. § 2.

And before a justice of the peace in divers cases, one witness is

sufficient to convict an offender; the same being directed by special statutes.

But by stat. 7 *W.* 3. *c.* 3. § 2. In case of high treason, whereby corruption of blood shall be made, no person shall be attainted but upon the oaths of two witnesses, either both to the same overt act, or one of them to one, and the other of them to another overt act of the same treason.

7 W. 3. c. 3. In high treason.

But in *Gahagan's* case at the *O. B. Jan. sess.* 1748, 1 *Leach*, 42., it was determined that a conviction of high treason, may be upon the evidence of one witness, in all cases where there is no corruption of blood.

And in those courts which proceed by the rules of the civil law, as the spiritual court and the courts of equity, two witnesses are generally required; and the reason why the civil law requires two witnesses is, because their trial is by witnesses, and not by a jury of twelve men. 1 *Inst.* 6. *b.* *Plowd.* 12. *a.*

By the civil law.

By stat. 29 *C.* 2. *c.* 3. § 5. devises of lands shall be attested by three witnesses at the least.

29 C. 2. c. 3.

II. Of written Evidence.

Acts of parliament relate either to the kingdom at large, when they are called *general* acts; or only to particular classes of men, or to certain individuals, in which case they are called *private* acts. *Bull. N. P.* 222. 1 *Phill. Ev.* 299.

Acts of parliament.

The former are not, correctly speaking, the subject of proof in any court of justice, for being the law of the land, they are supposed to be known to every man; and therefore the printed Statute Book is on all occasions referred to, not as evidence to prove that of which every man is presumed to be already conusant; but for the purpose of refreshing the memories of those who are to decide upon them. But private acts of parliament not concerning the public, are not considered as *laws*, but *facts*, and therefore must be proved like other records which concern private rights, by copies from the Parliament Rolls, for the printed Statutes are in this respect, only private copies, and consequently no evidence of the fact. In one case Ld. C. B. *Parker* permitted the printed statutes touching the College of Physicians, which is a private act, to be read in evidence from the Statute Book printed by the king's printer; but the general, indeed universal practice, is to prove examined copies; vide *Gilb. Ev.* 10. 13. To prevent this inconvenience the legislature frequently declares, that acts, in their nature private, shall be deemed public, which enables judges to consider them as laws, and thereby prevents the necessity of evidence to prove, or special pleading to introduce them to the notice of a court of justice. Vide *Peake's Ev.* 30. n. (*a.*) *Bull. N. P.* 223, &c. *Preface to Tyrw. & Tyn. Dig. of Stat.* p. ix. n. (*.)

General acts.

Private acts.

And by stat. 41 *G.* 3. U. K. *c.* 90. § 9. The statutes of *England* and of *G. B.*, printed and published by the king's printer, shall be received as conclusive evidence of the several statutes in the courts of either kingdom.

41 G. 3. c. 90. Irish acts.

The preamble of an act of parliament, reciting that certain outrages had been committed in particular parts of the kingdom, has been adjudged by the court of K. B. in a late case to be admissible in evidence, for the purpose of proving an introductory aver-

Preamble of acts.

ment in an information for a libel, that outrages of that description had existed. Public acts of parliament, it was said, are binding upon every subject; the judges are bound to take judicial notice of their contents; every subject is, in judgment of law, privy to the making of them, and supposed to know them; the passing of an act of parliament is a public proceeding in all its stages, and when the act is passed, it is, in the contemplation of law, the act of the whole body of the kingdom. The court of K. B. for these reasons were of opinion, that the preamble in question had been properly admitted in evidence. *R.* v. *Sutton*, *H.* 1816. 4 *M. & S.* 532. 1 *Phill. Ev.* 301.

Of Records.

Records are the memorials of the proceedings of the legislature, and of the king's courts of justice, preserved in rolls of parchment; and they are considered of such authority, that no evidence is allowed to contradict them. 1 *Inst.* 117. *b.* 1 *Phill. Ev.* 299.

But *copies* of them must be proved by witnesses, and then are good evidence. No rasure or interlining shall be intended in them. But the surest way is to exemplify a record under the great seal, or at least under the seal of the court. Dr. *Leyfield's case*, 10 *Rep.* 92.

Records.

Records cannot be transferred from place to place to serve a private purpose, and therefore copies of them must be allowed in evidence. But a copy of a copy is no evidence. *Bull. N. P.* 226.

Copies of records.

Copies of records may be under seal, and not under seal. Those under seal are called exemplifications, which are of two kinds; under the great or broad seal, and under the seal of some other court. 1 *Phill. Ev.* 364.

Under the broad seal.

When under the *broad seal*, they proceed from out of the court of chancery; the record itself having either been there originally, or come thither by *certiorari*. If under the *broad seal*, the copy is itself evidence without further proof. *Bull. N. P.* 226.

Under the seal of the court.

When under seal of the court to which the records belong, they also are good evidence. *Bull. N. P.* 228.

Copies not under seal.

1. Sworn or examined copies.

Such copies of records as are not under seal must be sworn (that is, examined) copies, or office copies. Where the original record is lost, then a copy *vetustate temporis aut judiciarià cognitione roborata*, may be given in evidence. *Bull. N. P.* 228.

The sworn copy should contain the whole of the record. 3 *Inst.* 173. *Bull. N. P.* 228.

2. Office copies.

It is a general rule, that a copy authenticated by a person appointed for that purpose (viz. an *office* copy), is good evidence of the contents of the original, without any proof of its being an examined copy. 1 *Phill. Ev.* 367. See 2 *Campb.* 390.

But where the officer of the court is only entrusted with the custody of records, and is not authorised to make out a copy, he has no more authority for that purpose than a common person, and the copy must be regularly proved in a strict and regular mode. 1 *Phill. Ev.* 368.

Copies of records are to be proved as other transcripts by a witness, who has compared the copy, line for line, with the origi-

nal, or who has examined the copy, while another person read the original. *Reid* v. *Margison*, 1 *Campb.* 470. *Rolf* v. *Dart*, 2 *Taunt.* 52. And it ought to appear that the original came from the proper place of deposit, or out of the hands of the officer in whose custody the records were kept. *Adamthwaite* v. *Synge*, 1 *Stark. N. P.* 183. 4 *Campb.* 372. *S. C.* 1 *Phill. Ev.* 366.

Verdict.

No verdict shall be given in evidence but between those who were parties or privies to it; because otherwise a man would be bound by a decision, who had not the liberty to cross-examine; and nothing can be more contrary to natural justice than that any body should be injured by a determination, which he or those under whom he claims, was not at liberty to controvert. *Bull. N. P.* 232.

And a verdict will not be admitted in evidence, without likewise producing a copy of the judgment founded upon it; because it may happen that the judgment was arrested upon a new trial granted. But this rule doth not hold in the case of a verdict on an issue directed out of chancery; because it is not usual to enter up judgment in such case; and the decree of the court of chancery is equally proof that the verdict was satisfactory, and stands in force. *Bull. N. P.* 234.

Judgment of quarter sessions in appeals.

A judgment by the quarter sessions, discharging an order of removal (not for defect of form, but upon the merits), is conclusive as between the contending parishes, that the settlement of the pauper was not in the appellant parish at the time of the removal; but it is binding only on these parishes, not on a third parish. An order of removal executed, and not appealed against, is conclusive of the pauper's settlement at the time of the order, even as between third parishes who were not parties to that order. *R.* v. *Corsham*, 11 *East.* 388.

And a judgment by the quarter sessions, confirming an order of removal, is conclusive upon the appellant parish as to all the world, and may be given in evidence against them by a third parish on any subsequent appeal. Here, it may be observed, the party, against whom the judgment was pronounced, had an opportunity of discharging themselves by proving the liability on a third parish; and this not having been done, and the court of quarter sessions having confirmed the order of removal, the last settlement is adjudged to be in the appellant parish; and this point being once determined, the judgment must be final, that there may be some end to litigation. 1 *Phill. Ev.* 311, 312.

Final judgment.

And note, whenever a matter comes to be tried in a collateral way, the decree, sentence, or judgment of any court, ecclesiastical or civil, having competent jurisdiction, is conclusive evidence of such matter; and in case the determination is final in the court, of which it is a decree, sentence, or judgment, such decree, sentence, or judgment will be conclusive in any other court having concurrent jurisdiction. *Bull. N. P.* 244.

Public matters not of record.

There are also public matters that are not records, as *transactions in chancery* and *court roll*: and of these, copies may be given in evidence. *Bull. N. P.* 234.

Chancery proceedings.

The reason why the proceedings in chancery are not records is this, because they are not the precedents of justice: for the judgment there is according to equity and good conscience, and not according to the laws and customs. And the reason why any

record is of validity and authority is, because it is a memorial of what is the law of the nation: now chancery proceedings are no memorials of the laws of *England*, because the chancellor is not bound to proceed according to the laws. *Bull. N. P.* 235.

Bill.

A bill in chancery will not be evidence, except to show that such a bill did exist, and that certain facts were in issue between the parties, in order to introduce the answer or the depositions of witnesses. 1 *Phill. Ev.* 341. It is not to be admitted as evidence in courts of law, to prove any facts either alleged or denied in the bill. *Case of the Banbury Peerage*, 2 *Selw. N. P.* 685.

Answer.

Answers in Chancery are confessions on oath, and therefore strong evidence against the party who makes them. When an answer is read, all the parts must be taken together, connected and entire. 1 *Phill. Ev.* 342.

Affidavits.

A mere voluntary affidavit may be read against the person who made it, and it must be proved to be sworn. But if it be only proved to be signed by the party, it will be evidence as a mere writing. *Bull. N. P.* 238.

But if it were an affidavit in any cause, then proof of the cause depending, and the using of the affidavit, would perhaps be evidence upon an indictment for perjury. *Bull. N. P.* 238.

Copies thereof.

The copy of a voluntary affidavit cannot be given in evidence *Bull. N. P.* 238. *Peake's Ev.* 57.

Depositions. Witness dead.

Depositions of witnesses in a suit in chancery, may be read when the witness is dead, but not when the witness is living: for whilst the witness is living, they are not the best evidence the nature of the thing is capable of. *Bull. N. P.* 239.

Witness not to be found, &c.

Also when a witness cannot be found after strict enquiry, or if it be proved that he has been kept away by the contrivance of the other party, or that he is out of the kingdom or not amenable to the process of the Court. *Bull. N. P.* 239. 243. 1 *Phill. Ev.* 345.

Witness ill.

Or if it be proved that a witness was subpœnaed, and *fell sick by the way*, the deposition is the best evidence that can be had. But if the witness is in a state to be produced, his deposition cannot be received. 1 *Phill. Ev.* 345.

And a deposition cannot be given in evidence against any person that was not party to the suit, and the reason is, because he had not liberty to cross-examine the witness; and it is against natural justice that a man should be concluded by proofs in a cause to which he was not a party. For this reason, depositions in chancery shall not be read for or against the defendant upon an information or an indictment, for the king was no party to the suit. *Bull. N. P.* 239.

Yet this rule admits of some exceptions, as particularly in all cases where hearsay and reputation are evidence: and in such cases depositions are admissible in evidence, in a suit between other parties, provided they have not been made *post litem mortam*. But if the question at issue is precisely the same in both suits, the depositions in the former suit cannot be admitted. *Berkeley Peerage case*, 1 *Phill. Ev.* 347.

Depositions in ecclesiastical courts.

Depositions taken in an ecclesiastical court, in a cause within its jurisdiction, seem to be admissible in evidence upon the same footing as depositions in the court of chancery, the parties being

the same, and having had an opportunity of cross-examining the deponents. 1 *Phill. Ev.* 359, 360.

To contradict witness.

So a deposition taken in a cause between other parties will be admitted to be read, to contradict what the same witness swears at a trial. *Bull. N. P.* 240.

Commissioners of Bankrupts.

Depositions before commissioners of bankrupts, when recorded according to the directions of stat. 5 *G.* 2. *c.* 30. § 41. (now repealed by stat. 5 *G.* 4. *c.* 98. § 1.) have, after the death of a witness, been admitted to be read. *Janson* v. *Wilson*, 1 *Dougl.* 257. (See also stat. 5 *Geo.* 4. *c.* 98. § 87, 88. 91, 92.)

Conviction.

A CONVICTION in a court of criminal jurisdiction is conclusive evidence of the fact, if it comes collaterally in controversy in a court of civil jurisdiction: yet an acquittal in such court is no proof of the reverse. *Bull. N. P.* 245.

Copy thereof.

A *copy of a conviction* for killing game was agreed to be evidence in bar of an action brought for the same offence, and the defendant is entitled to such copy. *Rex* v. *Midlam*, 3 *Burr.* 1720.

Probate of a will.

An examined copy of the probate of a will is good evidence where the will itself is of chattels; for there the probate is an original, taken by authority, and of a public nature, nor is the original will admissible for that purpose: but the probate of a will, devising real property, is not evidence of the contents of the will as to such property, even though the original is proved to be lost; the spiritual court having no power to authenticate such a devise, as far as it relates to land. *Bull. N. P.* 245. 1 *Phill. Ev.* 325. *Doe. d. Ash* v. *Calvert*, 2 *Campb.* 389. *Hoe.* v. *Nathrop*, 3 *Salk.* 154. 1 *L. Raym.* 154.

Will lost.

In a case at *Worcester Sum. Ass.* 1809, before *Wood* B. on proof that a will of lands had been lost, parol evidence of its contents was received from a witness who heard it read over before the testator's family on the day of his funeral. 2 *Camph.* 390. (*n*).

Probate lost.

It is not the practice in the ecclesiastical courts to grant a second probate if the first should be lost, but only to grant an exemplification from the record of the court, which exemplification will be evidence of the proof of the will.

Letters of administration.

The ecclesiastical court never grants an exemplification of letters of administration; but only a certificate that administration was granted. Therefore where a lessee pleads an assignment of a term from an administrator, such certificate is good evidence. So would the book of the ecclesiastical court wherein was entered the order for granting administration. *Kempton* v. *Cross*, *Rep.* temp. *Hardwicke*, 108. *Bull. N. P.* 246.

The probate of a will is not conclusive evidence of its validity on an indictment for forgery.

T. Buttery and *T. M'Namara*, were convicted at the *O. B. Dec. Sess.* 1817, before *Garrow*, B. of forging the will of *Benjamin Mann*. In the course of the evidence in support of the prosecution, the probate of the will under the seal of the ecclesiastical court was produced. Mr. *Alley* for the prisoners, contended that this unrevoked, was a judgment and conclusive evidence of the validity of the will, relying upon the authority of *Rex* v. *Vincent*, 1 *Str.* 481. His lordship over-ruled the objection, but reserved the point for the consideration of the judges, and their opinion was delivered at the *O. B. May Sess.* 1818., by *Bayley* J. that there was no foundation whatever for the objection. If it were valid, the probate, being under the seal of the spiritual court, it would tend to give that court a jurisdiction in criminal cases

which it did not possess. Conviction affirmed, and sentence of death was accordingly passed upon the prisoners. *Rex* v. *Buttery and M'Namara. MS. C. C. R.* This point was previously held by Lord Ellenborough in *R.* v. *Gibson, Lanc. Sum. Ass.* 1802. stated in 2d *Pothier* by *Evans,* 356. *Vide etiam.* 1 *Phill. Ev.* 326. 343.

Executor.

An examined copy of the probate is evidence of the person there named being executor, as the probate is an original, taken by authority, and of a public nature (3 *Salk.* 154. 1 *Ld. Raym.* 154.); but a copy of the will would not be evidence of that fact. *Bull N. P.* 246.

Court baron rolls.

The rolls of a *court baron* are evidence; for they are the public rolls by which the inheritance of every tenant is to be preserved: and they are the rolls of the manor court, which was anciently a court of justice relating to all property within the district. *Bull. N. P.* 247.

Copy thereof
Of church register.
Of town books.
Rules as to copies.

The copy of the *court roll of a manor* under the steward's hand is good evidence; so an examined copy of the court roll, if sworn to be a true one, as also the copy of a *church register;* the copies of *town books,* and the like. For where the original itself is evidence, the immediate copy thereof is also good evidence. *Skinner,* 584. *Hoe* v. *Nathorp,* 1 *Ld. Raym.* 154. *Bull. N. P.* 247.

And generally, wherever an *original* is of a *public nature,* and would be evidence if produced, an immediate sworn copy thereof will be evidence, as a copy of a bargain and sale; of a deed inrolled, and the like: but where an *original* is of a private nature, a copy is not evidence, unless the original is lost or destroyed. *Lynch* v. *Clarke,* 3 *Salk,* 154.

Journals parliament.

A copy of the journals of the house of lords respecting the reversal of a decree was adjudged to be good evidence. *Jones* v. *Randall,* 1 *Cowp.* 17.

So also in *Rex* v. *Ld. George Gordon,* 2 *Dougl.* 593. sworn copies of certain entries in the journals of the house of commons were produced and read as evidence, on the part of the crown, without being objected to.

In the case of Lord *Melville,* upon an impeachment by the house of commons, a question arose whether the printed journals of that house were evidence, upon which the lord chancellor (*Erskine*) said he had always considered the course in the courts of law to be, that original public documents need not be produced, which are not only not removable at the call of individuals, but which, from their nature, might be necessary as evidence in different places at the same time; but in those cases you must have one of two things, either you must have an office copy, where there is any particular authority for taking such office copies, or an examined copy sworn to at the trial by the witness producing it; and the printed journal, if the party so producing it had examined it with the original, would be as good evidence as the original journal itself; but unless the copy be so examined, the original journal must be produced. 29 *Howell's St. Tri.* 685.

The journals of the house of lords are evidence to prove not only the address of the lords to the king, but the king's answer also. *R.* v. *Franklin,* 17 *Howell's St. Tri.* 636. cited 5 *T. R.* 445. 1 *Phill. Ev.* 386.

[illegible] copy

On a warrant to a constable to *distrain* goods by virtue of an act of parliament, the constable makes distress, and keeps the

warrant: a copy of the warrant in this case will be good evidence. *Morley* v. *Stacker*, 6 *Mod.* 83.

Titles of office.

If upon collateral issue it is to be proved that such an one was justice of the peace, baronet, or the like, common reputation is sufficient proof, without shewing the commission or letters patent of the creation. *Tr. per Pais*, 347.

And in the case of all peace officers, justices of the peace, constables, &c. it is sufficient to prove that they acted in these characters, without producing their appointments. *So determined by all the Judges in the case of the Gordons, tried for murder in* 1789. 1 *Leach*, .

And in an indictment for disobeying a justice's order for diverting a road, it was held unnecessary to produce the commission of the peace to prove the persons to be magistrates who signed the order. *Per Hotham*, B. *R.* v. ——, *Kingston Lent Ass.* 1801. 1 *Nol. P. L.* 598.

Inquisitio post mortem.

An inquisition *post mortem* is evidence, but not conclusive. *Earl of Thanet* v. *Foster*, 1 *T. Jones*, 224.

Parish register. Entries.

The entry of the names and titles of persons in a *church book*, either for marriages or births, is evidence; but not conclusive of the marriage or birth of any persons, unless the identity of the person (by such entries intended) is fully proved, and also strengthened with circumstances, as cohabitation, the allowance of the parties themselves, and the like. 12 *Vin. Abr.* 89. See *Wihen* v. *Law*, 3 *Stark. R.* 63. tit. Parish Registers, Vol. III.

Day book of the register.

But a day-book from whence the register is made up, was not allowed as evidence to contradict the latter in a question of legitimacy: for though it was insisted that one was the original entry, the other was the only register, and there cannot be two registers in one parish. *May* v. *May*, 2 *Str.* 1073. *Bull. N. P.* 247. 1 *Phill. Ev.* 414. See 1 *Stark. N. P.* 179.

52 G. 3. c. 146.

By stat. 52 *G.* 3. *c.* 146. § 7. It is enacted that copies of the register books, verified by the officiating minister of the parish, shall be transmitted annually by the churchwardens, after they or one of them shall have signed the same, to the registrars of the diocese within which the church is situated. See title Parish Registers, Vol. III.

Parish books.

An entry of the receipt of money by the officers of a township from the officers of another township of a proportion of church rates made in a parish book, is evidence to charge the latter officers with the same proportions in future: and another entry, explaining the proportions made on the same page, is also admissible evidence; and the first point, upon the principle, that by such entry the officers charged themselves with the receipt of money. *Stead* v. *Heaton*, 4 *T. R.* 669.

Gazette.

The gazette published under the sanction and controul of government, is sufficient evidence of any act of state so announced, but not of any private matters contained therein, or done by or to the king otherwise than in his regal capacity. The king's proclamations, addresses from the people to the crown, and the like may be proved in this manner without a production of the proclamations or addresses themselves: for these being matters of public notoriety, communicated to the public in a known prescribed form, the law pays such attention to the established rules of office as not to call for higher evidence than that to which

Proclamation

all mankind look for information on the subject. *Rex* v. *Holt*, 5 *T. R.* 436. 1 *Phill. Ev.* 387, 388.

And in *R.* v. *Sutton*, 4 *M. & S.* 532. the court of *K. B.* determined, that the king's proclamation (which recited that it had been represented, that certain outrages had been committed in different parts of certain counties, and offered a reward for the discovery and apprehension of offenders) was admissible in evidence, as proof of an introductory averment in an information for a libel, that acts of outrages of that particular description had been committed in those parts of the country. See 1 *Phill. Ev.* 388.

The Gazette is sufficient evidence of a proclamation issued under an order in council; because it is a public act regarding the crown and government, and must pass the great seal before it can be admitted into the Gazette. *The Attorney General* v. *Theakstone and another*, *H.* 60 *G.* 3. & 1 *G.* 4. 8 *Price* 89. *and cases in Phillips*, 6 *Ed.* 387. n. (1.)

Articles of war.

Upon the same principle the articles of war, as printed by the king's printer, are allowed to be evidence of such articles. *R.* v. *Withers, cited by Buller* J. 5 *T. R.* 146. *See stat.* 5 *G.* 4. *c.* 13. § 36. *Mutiny Act.*

Gazettes.

Gazettes are not evidence of private titles or private interests, as of a presentation, or of a grant by the king to an individual, which have no reference to the affairs of government; nor is a gazette evidence to prove an appointment to a commission in the army. *Kirwan* v. *Cockburn*, 5 *Esp.* 233. *R.* v. *Gardner*, 2 *Camp.* 513. 1 *Phill. Ev.* 388.

An advertisement in the Gazette, announcing a dissolution, has been admitted as evidence of a public notification of that fact; but such evidence is of little avail, unless it be shewn, that the party entitled to notice, was in the habit of reading the Gazette. *Leeson* v. *Holt*, 1 *Stark*, *N. P.* 186. *Godfrey* v. *Macaulay*, *Peake's Rep.* 155. 1 *Esp.* 371. *S. C. Newsome* v. *Coles*, 2 *Campb.* 619. See also *Graham* v. *Hope*, *Peake's Rep*, 154. *Gorham* v. *Thompson*, *ib.* 42. 1 *Phill. Ev.* 388.

And such an advertisement in a common newspaper is not even admissible, without proof that the party took in that paper. 1 *Stark. N. P.* 186. 1 *Phill. Ev.* 388.

Navy office register.

The register of the navy office, with proof of the method there used, to return all persons dead with the mark *D d*, is sufficient evidence of death. *Bull. N. P.* 249. *Rhodes's case*, 1 *Leach*, 24.

Herald's books.

Rolls, or ancient books in the *herald's office*, are evidence to prove a pedigree; but an extract of a pedigree, proved to be taken out of records, shall not; because such extract is not the best evidence in the nature of the thing, as a copy of such records might be had. *Bull. N. P.* 218. 3 *Blac. Com.* 105.

Public surveys. Doomsday book.

Surveys, taken on public occasions, are also evidence to ascertain the rights of individuals not named in them. Thus Doomsday book, which was a survey of the king's lands made in the time of William the Conqueror, is the only evidence to prove whether a manor is held in ancient demesne; that is, whether it was part of the socage tenure in the hands of *Edward* the Confessor or not: and so high is the credit of this book, that the inspection is made by the court. So if a question arise as to the extent of the ports, there lies in the exchequer a particular survey which ascer-

tains it: and in many instances, where a commission has been confined to a particular place, it has been received as admissible evidence; and even where the commission has been lost, the survey taken under it has been allowed as evidence. *Hob.* 188. *Gilb. Ev.* 78. 1 *Phill. Ev.* 383.

Boundary roll. An old *Terrier*, or *survey of a manor*, whether ecclesiastical or temporal, may be given in evidence; for there can be no other way of ascertaining the old tenures or boundaries. *Bull. N. P.* 248. 1 *Phill. Ev.* 399.

Terriers. A terrier of glebe is not evidence for the parson, unless signed by the churchwardens as well as the parson; nor these either, if they be of his nomination; and though it be signed by them, yet it seems to deserve very little credit, unless it be likewise signed by the substantial inhabitants. But, in all cases, it is certainly strong evidence against the parson. *Bull. N. P.* 248.

An ecclesiastical terrier is evidence of the possessions of a church, if it has been regularly made and preserved in the proper repository. Ecclesiastical terriers are constantly received in questions of tithes: they are ecclesiastical records, made in *perpetuam rei memoriam*, and are as solemn instruments as any that can be produced on such subjects. *Drake* v. *Smyth*, 5 *Price*, 380. 383. 1 *Phill. Ev.* 399. being almost paramount to usage, *S. C.*; but not conclusive, *Blundell* v. *Maudsley*, 15 *East*, 641. *Lake* v. *Skinner*, 1 *J. & W. Rep.* 20. See 3 *Burn's Eccl. Law*, by *Tyrwhitt*, p. 400. and note.

A *Terrier* derives its authority from being found either in the bishop's register office, or the registry of the archdeacon of the diocese. Unless it comes from one of these repositories (or from the church chest, *Armstrong* v. *Hewitt*, 4 *Pri. R.* 216. It cannot, in general, be admitted in evidence. A paper, therefore, purporting to be a *Terrier*, found in the charter chest of a college, which had property in the parish, was thought to be inadmissible to disprove a modus. 4 *Gwill.* 1406. 1 *Phill. Ev.* 399.

Customary of a manor. A parchment writing produced by the steward of a manor as the customary of the manor, and received by him from his predecessor, who had also received it from his, and had possession of it all the time, and which was said to be *ex assensu omnium tenentium*, was held to be good evidence, to prove the course of descent within a manor; and this, although it was not signed by any of the tenants. *Denn* v. *Spray*, 1 *T. R.* 466.

Histories. *Camden's Britannia* was offered in evidence on an issue, whether, by the custom of *Droitwich*, salt pits could be sunk in any part of the town, or only in a certain place, but rejected: for the court held that a *general history* might be given in evidence to prove a matter relating to the kingdom in general, because the nature of the thing requires it; but not to prove a particular right or custom. *Stainer* v. *the Burgesses of Droitwich*, 1 *Salk.* 281. *Skinn.* 623. 1 *Stark. Ev.* Part 2. p. 181. So in the exchequer, the question being, whether the *Abbey de Sentibus* was an inferior abbey or not, *Dugdale's Monasticon* was refused for evidence, because the original records might be had in the augmentation office.

But in *Neale* v. *Fay*, (cited *Salk.* 282. and *Bull. N. P.* 249. as *Neale* v. *Jay*,) in order to shew that a deed was forged which

bore date 1 *Ph. & M.*, in which all the titles were given to *Philip* which he used after the surrender thereof to him by *Charles* the 5th, chronicles were admitted to shew that he did not take those titles upon him, till 6 months after the date of the deed. And in the case of *St. Catherine*'s hospital, 1 *Salk.* 282. *Hale* C. J. allowed *Speed*'s chronicles to be evidence of a particular point of history in the time of *Edw.* 3. The same work was again admitted as evidence of the death of *Edw.* the 2d's queen, by *Pemberton* C. J. in Lord *Brounker* v. *Sir R. Atkins, Skinn.* 14. So a year book may be evidence to prove the course of the court. *Ibid.* 1 *Stark. Ev. Part* 2. p. 181. *Bull. N. P.* 248.

It has been determined, that *Dugdale's Baronage* is not evidence to prove a descent. *Piercy's case,* 2 *Jon.* 164. 1 *Phill. Ev.* 403.

So in *Cockman* v. *Mather,* 1 *Barnard.* 14. on a trial at bar, concerning the right of visiting *University* College in *Oxford*. One of the issues was, whether king *Alfred* was founder. And the counsel for the plaintiff would have given in evidence several historians as to this point. But the Chief Justice declared that such evidence is never admitted, unless in proof of a point concerning the public government. And the evidence was not allowed.

Ancient maps.

An *ancient map* will be received as evidence where it has accompanied possession, and agreed with the boundaries as adjusted by ancient purchases. If two manors are in the hands of the same person, and a map is made by him, and afterwards one of the manors is conveyed to another person; and then, at a distant time, disputes arise as to the boundaries, the map so taken will be evidence; but if the person, under whose direction the map was taken, was possessed of only one manor; or a lord describes the boundaries of his waste; or the churchwardens cause a copper-plate map to be made, wherein they describe land which an individual claims, to be a public highway; the map so taken is not evidence aginst the rights of persons not parties to the making of it. *Peake's Ev.* 87.; *and cases there cited.*

Examinations as to settlement under the mutiny act.

In the annual *Mutiny Acts,* (See 5 *G.* 4. *c.* 13.) there is always inserted a clause rendering the examination of a non-commissioned officer or soldier, under certain circumstances, legal evidence to be received upon a question of settlement.

Soldiers' examination under the mutiny act.

By stat. 5 *G.* 4. *c.* 13. § 72. it is enacted, "That it shall and may be lawful for any justice of the peace, for the county, town, or place where any non-commisioned officer or soldier shall be quartered in that part of *G. B.* called *England,* in case such non-commissioned officer or private soldier have either wife, or child, or children, to cause such non-commissioned officer or soldier to be summoned before him, in the town or place where such non-commissioned officer or soldier shall be quartered, in order to make oath of the place of his last legal settlement (which oath such justice is hereby empowered to administer); and such non-commissioned officer or private soldier as aforesaid is hereby directed to obey such summons, and to make oath accordingly; and such justice is hereby required to take the examination of such non-commissioned officer or soldier in writing, and to give an attested copy of the examination so taken before him to the person so examined, to be by him delivered to his commanding officer,

in order to be produced when required; which said examination and such attested copy shall be at any time admitted in evidence, as to such last legal settlement, before any of H. M.'s justices of the peace, or at any general or quarter sessions of the peace; although such non-commissioned officer or soldier be dead or absent from the kingdom: Provided always and in case any non-commissioned officer or private soldier shall be again summoned to make oath as aforesaid, then on such examination or such attested copy thereof being produced by him, or by any other person on his behalf, such non-commissioned officer or soldier shall not be obliged to take any other or further oath with regard to his legal settlement, but shall leave a copy of such examination, or a copy of such attested copy of examination, if required."

Soldier's examination.

The statute is to be construed *strictly;* and therefore no other attested copy is legal evidence, while the original is in existence, except that given to the soldier. *R.* v. *Clayton le Moors, 5 T.R.* 706. 1 *Phill. Ev.* 358.

By the case of *R.* v. *Bilton with Harrowgate,* 1 *East.* 13. It appears that the paper produced under this act must be properly authenticated by proof that the persons attesting are magistrates; or, at least that the signatures are the hand-writing of those whose they purport to be.

49 G. 3. c. 124. Any magistrate may take the examination of an infirm pauper as to his settlement and report to petty sessions.

By stat. 49 *G.* 3. *c.* 124. § 4. it is enacted, That whenever it shall happen that any pauper is by age, illness, or infirmity unable to be brought up to the petty sessions to be examined as to his or her settlement, it shall be lawful for any one magistrate acting for the district where such pauper shall be, to take the examination of the said pauper, and to report the same to any other magistrate or magistrates acting for the said district, and for the said magistrates upon such report to adjudge the settlement of the said pauper and make and suspend the order of removal, as fully and effectually to all intents and purposes as if the said pauper had appeared before two magistrates. *Vide* Vol. IV. p. 636.

59 G. 3. c. 12. Examination of prisoners as to their settlements, made evidence.

And by stat. 59 *G.* 3. *c.* 12. § 28. it is enacted, That it shall be lawful for any justice of the peace to take in writing the examination on oath of any person having a wife or child, who shall be a prisoner in any gaol or house of correction, or in the custody of the keeper of any such gaol or house of correction, or who shall be in the custody of any constable or other peace officer, by virtue of any warrant of commitment, touching the place of his or her last legal settlement; and such examination shall be signed by such justice taking the same, and shall be received and admitted in evidence, as to such settlement before any justices, for the purpose of any order of removal so long only as the person so examined shall continue a prisoner. Vide Vol. IV. p. 768. and *R.* v. *The Just. of Norfolk.* Vol. IV. p. 807.

In *Rex.* v. *Ravenstone, 5 T. R.* 373. the court of K. B. held, that where a pregnant woman died after examination, but before an order of filiation, such examination taken under stat. 6 *G.* 2. *c.* 31. was admissible evidence on an application to the quarter sessions to make an order of filiation on the putative father; and that, if not contradicted, it ought to be considered as conclusive. But in the case of *R.* v. *Eriswell,* 3 *T. R.* 707. where two justices had taken the examination of a pauper relative to his settlement, but did not remove him thereon, and he afterwards became insane,

the judges of the court of K. B. were equally divided on the question, whether two other justices could remove his family on that examination. The opinions of the judges in this case, not only on the point before the court, but also as to hearsay evidence in general, are very valuable and highly important, but much too long to be inserted at length in a work of this nature.

Depositions after death of witness.

The general rule, respecting the admissibility of depositions after the death of the witness, is, that they are not evidence, unless they have been taken judicially, and unless the party, whose interests would be affected by them, had an opportunity of being present and cross-examining the deponent. It is, therefore, now clearly established that the *ex parte* examination of a pauper concerning his settlement, taken on oath before magistrates, is not admissible upon a question of settlement, as evidence against the appellant parish. *R.* v. *Nuneham Courtenay*, 1 *East*, 373. *R.* v. *Ferry Frystone*, 2 *East*. 54. *R.* v. *Abergwilly*, 2 *East*. 63. The objection against their admissibility is, not that the magistrates have no power to administer an oath (for it seems to be admitted, that the statute 13 & 14 *C.* 2. *c.* 12. § 1., which first gave them a power to remove, gave them also incidentally a power to examine the pauper preparatory to a removal. Per Ld. *Kenyon*, *C. J.* 3 *T. R.* 721. See *Lamb*, *b.* 1. *c.* 21. *p.* 209.), but that the examination is *ex parte*, obtained at the instance of overseers, whose parish would be benefited by the removal, and behind the backs of the appellants, who received no notice of the proceeding, and had not the benefit of a cross-examination. By Ld. *Kenyon*, *R.* v. *Eriswell*, 3 *T. R.* 725. 1 *Phill. Ev.* 358.

Ph. & M.

As to the examinations taken before the coroner or justices of the peace under the stat. of *Philip* and *Mary*, see title **Examination**, *post*.

Private Writings.

The next class of written evidence consists of *private writings*, as deeds, entries in private books, and other writings made by individuals, relating to themselves or others, in their own private capacity.

Deeds.

Writings lost or concealed.

In cases where writings have been lost by burning of houses, by rebellion, or when robbers have destroyed them, or the like; the law, in such cases of necessity, allows them to be proved by witnesses. *Jenk.* 19. *Wood's Inst. b.* 4. *c.* 4.

If a man destroy a thing that is designed to be evidence against himself, a small matter will supply it; and therefore the defendant having torn his own note signed by him, a copy sworn was admitted to be good evidence to prove it. 1 *Ld. Raym.* 731.

So also where a person indicted for forging a note, which he afterwards got possession of and swallowed; parol evidence was permitted to be given of the contents of the note, and being destroyed, no notice was given to produce it. *R.* v. *Spragge*, cor. *Buller* J. on the northern circuit, cited *per* Ld. *Ellenborough* C. J. in *How* v. *Hall*, 14 *East*, 276.

R. v. *Inh. of Castle Morton, E.* 1 *G.* 4. 3 *B.* & *A.* 588. See this case fully stated in vol. iv. p. 578, 579. The appellants, to prove a tenement to be of the value of 10*l.*, offered parol evidence of the contents of an unstamped agreement for letting it, which had been lost. This was refused by the sessions: the court affirmed their order. It could not even be received as a declaration; for it was a declaration made under such circumstances as prevented its being admitted in evidence.

See this case fully stated in Vol. IV. p. 578, 579.

Parol evidence of a lost agreement cannot be received, if the agreement was on unstamped paper; though it has been wrongfully destroyed by one of the parties, yet the other party will not be permitted to prove its contents by parol evidence; this is one of the risks which attends the omission to have the agreement properly stamped, that, if any accident happen to it, before the stamp is affixed, all remedy by action is entirely gone. *Rippiner* v. *Wright,* 2 *Stark. N. P.* 478. 2 *B.* & *A.* 478. 1 *Phill. Ev.* 486.

Refusal to produce deeds.

Where *the defendant himself has the deed* which concerns the land in question, and refuses (after notice) to produce it, a copy thereof will be permitted to be given in evidence, on its being proved to be a true copy. And if the party has no copy, he may produce an abstract, nay even give parol evidence of the contents; because in such case it may be impossible to give better evidence. In *civil* causes, the court will sometimes oblige parties to produce evidence which may prove against themselves, or leave the refusal to do it (after proper notice) as a strong presumption to the jury. The court will do it, in many cases, under particular circumstances, by rule before the trial; especially, if the party from whom the production is wanted applies for a favour. But in a *criminal* or *penal* cause, the defendant (it was said) is never forced to produce any evidence; though he should hold it in his hands in court. *Doe d. Haldane* & *Urry* v. *Harvey,* 4 *Burr.* 2484.

No difference between civil and criminal cases as to the matter of evidence.

However, in the case of *the Attorney General* v. *Le Merchant,* 2 *T. R.* 201. (n.) it was solemnly decided in the court of exchequer, that there is no difference in this respect between criminal and civil cases; that in both parol evidence may be given of the contents of a paper in the defendant's possession, on his refusing to produce it after notice for that purpose; and that a notice given to the defendant's agent or attorney is sufficient.

Service of notice on the wife of the defendant's attorney at his lodgings, to produce a lease on the evening before the trial is insufficient. So held *per* Ld. *Ellenborough* C. J. *Doe.* dem. *Wartney* v. *Grey,* 1 *Stark. N. P.* 283.

Deed destroyed by fire.

Where the deed has been destroyed by fire, a copy may be read in evidence; and if the party have no copy he may read an abstract, or may give parol evidence of the contents. *Bull. N. P.* 254.

Seal torn off.

R. v. *Metheringham, Palm.* 402. Every deed should regularly have the seal of the party: yet, upon an indenture to guide the uses of a common recovery being offered in evidence, the seals being torn off; and it being proved to have been done by a little boy, it was allowed to be read.

To prove the taking of an oath, in the act of uniformity, a certificate was produced that had only a small piece of wax upon it. By *Twisden* J.; if it were sealed, though the seal were broken

off, yet it may be read, as we read recoveries after the seal broken off; and he said, he had seen an administration given in evidence after the seal broken off; and so of wills and deeds. 1 *Mod.* 11. *Clerk* v. *Heath.*

Sealing is essential to a deed, but it is not material with what seal it is sealed. Any number of parties may use the same seal. If there be twenty to seal one deed, and they all seal upon one piece of wax and with one seal, yet if they make distinct and several prints, this is a sufficient sealing, and the deed is good. *Shep. Touchst. c.* 4. *p.* 55. 1 *Phill. Ev.* 444. 488, 489.

But this rule does not extend to warrants or orders executed under a power. In a case lately determined by the court of K. B. where the question was, whether a certificate signed by two churchwardens and one overseer, but bearing only two seals, was a legal and valid certificate under the stat. 8 & 9 *W.* 3. *c.* 30. which requires certificates to be under the hands and seals of the churchwardens and overseers, or the major part of them, or under the hands and seals of the overseers, where there are no churchwardens, the court determined that the certificate had not been properly executed. The facts of the case were shortly these: The certificate was duly attested, and allowed by magistrates, and purported to be the certificate of *A. B.* and *C. D.* churchwardens, and of *E. F.* overseer; one seal was opposite to the two first names, and the other seal opposite to the last: no trace of any other seal appeared on the instrument, and the certificate was above thirty years old. *R.* v. *Austrey, E. T.* 1817. 1 *Phill. Ev.* 453.

Proof of execution, when necessary.

If a deed be in existence, and in the power of the party, its execution must be proved by a subscribing witness: to which rule, however, there are some exceptions.

Ancient deeds. 30 years old.

If a deed be thirty years old, it may be given in evidence without any proof of the execution of it: however, there ought to be some account given of the deed, where found, &c.: and if there be any blemish in the deed, by rasure or interlineation, the deed ought to be proved, though it were above thirty years old, by the witnesses if living, and if they be dead, by proving the hand of the witnesses, or at least one of them, and the hand of the party, in order to encounter the presumption arising from the blemishes of the deed; and this ought more especially to be done, if the deed imports a fraud. *Bull. N. P.* 255.

25 years old.

There is no fixed rule upon this point, but a deed has often been allowed as evidence where it was but twenty-five years old. 12 *Vin. Abr.* 57.

Not produced after notice.

In covenant on an indenture of apprenticeship, the plaintiff proved that it was in the possession of the defendant, to whom he gave a notice to produce it. The court of C. P. held, that on non-production he might be let into parol evidence of its contents, without calling the subscribing witness. *Cook* v. *Tanswell, T.* 58 *G.* 3. 2 *Moore, C. P.* 513.

Coming from opposite party.

It was considered, in the case of *R.* v. *Middlezoy,* 2 *T. R.* 41. that where a deed came from the opposite party, proof of due execution was not necessary on the part of those calling for the production of the deed.

But in the subsequent case of *Gordon* v. *Secretan,* 8 *East,* 549. Lord *Ellenborough* C. J. said, that the case of the *King* v.

Middlezoy, had been much questioned at the time, and since over-ruled; and that the production of an instrument at the trial, in pursuance of a notice, would not supersede the necessity of proving it by one of the subscribing witnesses, as in ordinary cases. And *Lawrence* J. added, that this point had been so ruled by Lord *Kenyon* in a subsequent case, where the adverse party, having notice to produce a written instrument, produced it accordingly at the trial, and Ld. *Kenyon* C. J. held, that the party who called for it, was bound to call one of the subscribing witnesses to prove the execution.

The general doctrine laid down in *Gordon* v. *Secretan*, has, however, been restricted by the decision in *Pearce* v. *Hooper*, *T.* 50 *G.* 3. 3 *Taunt.* 60. in which case it was decided by the court of C. P. that where an adverse party produces, upon notice to do so, an instrument under which he claims a beneficial estate, the party calling for the deed shall *not* be compelled to prove its execution by the testimony of the attesting witness. *Mansfield* C. J. said, The mere possession of an instrument does not dispense with the necessity which lies on the party calling for it, of producing the attesting witness. An instance is properly put in the case of a will, cited in *Gordon* v. *Secretan*, as having been tried before Ld. *Kenyon*; for supposing that an heir at law is in possession of a will, and the devisee brings an ejectment, and calls on the heir to produce the will; there the heir claims, not under the will, but against the will, and it would be very hard that the will should be taken to be proved against him, because he produces it: but that is very different from the case where a man is called on to produce the deed under which he holds an estate. The defendant (added the Chief Justice, with reference to the case then before the court) has no interest in the fee simple of the estate, if this deed does not convey it: if, then, he produces the deed, under which he claims, shall it not be taken to be a good deed, so far as relates to the execution, as against himself?

And in *Orr* v. *Morice*, *M.* 2 *G.* 4. 8 *Taunt.* 139., which was an action for the use and occupation of premises, against the assignees of a bankrupt, the court of C. P. held that the deed of assignment of the bankrupt's effects, produced by the defendants, at the trial, under a notice from the plaintiff, was admissible in evidence without proof of the execution by the subscribing witness, as it appeared that one of the assignees had continued to occupy the premises for some time after the act of bankruptcy. The court held, that, as the assignees claimed a beneficial interest under the deed produced by them, the plaintiff might use it in evidence, without proving its execution. 1 *Phill.* 430, 431.

Mr. Phillipps says, the result, therefore, at present, appears to be that, when a party to a suit, in pursuance of a notice, produces an instrument to which he is a party, and under which he claims a beneficial interest, it will not be necessary that the other party, a stranger to the instrument, should call an attesting witness to prove the execution; but that, in other cases, the execution ought to be regularly proved by the party who offers the instrument as part of his evidence in the cause. 1 *Phill. Ev.* 432.

Subscribing witness.

It is not absolutely necessary that the witness should see the deed absolutely executed, for if the obligor of a bond, sign a bond, and then tell a certain person that he had signed it and

sealed it, and bid him witness it, which he does: that is a sufficient proof of due execution. *Powell* v. *Blackett*, 1 *Esp.* 97. *Park* v. *Mears*, 2 *Bos. & Pull.* 217. 1 *Phill. Ev.* 450.

The subscribing witness alone is competent to prove the execution, because he may be able to state the time of the execution, and some circumstances of the transaction, which may be material, and unknown to other persons. On an indictment, therefore, against an apprentice for enlisting himself in the army, all the judges held, that the indenture of apprenticeship could not be proved by the master, but that it was necessary to call one of the subscribing witnesses, *R.* v. *Jones*, 2 *East's P. C.* 822. 1 *Leach*, 174. *S. C.* See also *R.* v. *Harringworth*, 4 *M. & S.* 350. 1 *Phill. Ev.* 446.

Not essential. Subscribing witnesses are not essential to a deed. *Com. Dig. tit. Fait. B.* 4. *Peake's Ev.* 96.

If none. If there be none, the hand-writing of the party may be proved.

If dead. If the subscribing witness be dead, it is sufficient to prove his hand-writing: but it must also be proved that he is dead.

If ill. Illness is not a sufficient reason for dispensing with the attendance of a subscribing witness: such a relaxation of the rule has not yet been made, and it would obviously be liable to great abuse. *Harrison* v. *Blades*, cor. Ld. *Ellenborough* C. J. 3 *Campb.* 458. 1 *Phill. Ev.* 456. See *Jones* v. *Brewer*, 4 *Taunt.* 46.

Identity. In an action on a bond or promissory note or bill of exchange, some evidence of identity appears to be necessary. Proof of the witness's signature proves only this fact, that the instrument in question was executed by a person in a certain name; it does not prove the other important fact, that the defendant is that person. Some evidence seems necessary to connect the defendant with the bond or note. Proof of his signature on the instrument would be decisive. But such proof is not indispensably necessary; and much slighter evidence would, in the first instance, be sufficient. Evidence, that the defendant was present when the note was prepared by the subscribing witness, will serve to connect him with the instrument. *Nelson* v. *Whittall*, 1 *B. & A.* 19. 1 *Phill. Ev.* 456, 457.

Presumed deaths. According to the stat. of bigamy, 1 *Jac.* 1. *c.* 11., the presumption of the duration of life, with respect to persons of whom no account can be given, seems to end at the expiration of seven years, from the time when they were last known to be living. *Doe* v. *Jesson*, 6 *East.* 85. 1 *Phill. Ev.* 188. See *R.* v. *Twyning*, 2 *B. & A.* 386. *post.*

The fact of a tenant for life not having been seen or heard of for fourteen years by a person residing near the estate, although not a member of his family, is *primâ facie* evidence of the death of such tenant for life. *Doe* d. *Lloyd* v. *Deakin*, *E.* 2 *G.* 4. 4 *B. & A.* 433.

If absent. Where a subscribing witness is absent in a foreign country, his handwriting may be proved. *Coghlan* v. *Williamson*, *Dougl.* 93.

So, if he be in *Ireland* on duty in the army. *Anon. Per Grose J.*, *Lent Ass.* 1806, *Aylesbury*. Or serving in the navy, as appearing so to be by the admiralty books. *Parker* v. *Hoskins*, 2 *Taunt.* 223.

Or, if he be out of the jurisdiction of the court, so as not to be amenable to its process. *Prince* v. *Blackburn*, 2 *East*, 252.

Out of jurisdiction of the court.

Strict proof is required of diligent search after an attesting witness, and to no effect, before the handwriting of the witness can be proved. Here it was proved that, against the attesting witness, a bankrupt, a commission of bankruptcy had been taken out, to which he had never appeared. And Ld. *Ellenborough* C. J. said this was sufficient, as he would presume from his not surrendering, that he was out of the kingdom. *Wardell* v. *Fermor*, 2 *Camp.* 282.

Burt v. *Walker*, *T.* 2 *G.* 4. 4 *B.* & *A.* 697. Action upon a bail bond which was witnessed by the defendant's clerk (one *Smith*), who had been subpœnaed at the defendant's counting-house, and, at the time of serving the subpœna, said, that *he should not attend;* evidence, however, was given that he did attend when the cause stood in the paper for trial the first time, which was six weeks before the actual trial. The trial had been before twice put off on account of *Smith*'s absence, upon affidavits that he could not be found. Search was then made for him at the defendant's house, and in the neighbourhood, and it was likewise proved, that upon receiving information at the defendant's house that he was gone to *Margate* upon his master's business, the clerk of the plaintiff's attorney was sent thither to search for him. The affidavits stated, that he had been searched for up to the moment of trial, and could not be found. The cause was tried before *Holroyd* J., who admitted evidence of his handwriting, but reserved the point. On motion for a new trial, the court held the evidence of his handwriting was properly admitted. *Abbott* C. J. thought that due and diligent search was made, and with reference to the condition of the witness.

If he be absconded from his creditors, his handwriting may be proved. *Crosby* v. *Percy*, 1 *Taunt.* 364.

Absconded.

So, if by some criminal act he, subsequently to the execution of the deed, become incompetent as a witness in a court of justice. *Jones* v. *Mason*, 2 *Str.* 833.

Incompetent by infamy.

So if by interest subsequently accrued. *Goss* v. *Tracy*, 1 *P. Wms.* 289.

By interest.

In cases where there is no subscribing witness on the deed, or, where the subscribing witness denies having any knowledge of the execution (which is the same thing as if there were no witness at all) *Fitzgerald* v. *Elsee*, 2 *Camp.* 635. *Lemon* v. *Dean*, *ib.* 636. (*n.*) *by Le Blanc* J. in the case of a promissory note. *Talbot* v. *Hodson*, 7 *Taunt.* 251. Or where the name of a fictitious person is inserted. *Fasset* v. *Brown*, *Peake's Rep.* 23. Or where the attesting witness was interested at the time of the execution of the deed, and continues so at the time of the trial. *Swire* v. *Bell*, 5 *T. R.* 371. Or where the person who has put his name as subscribing witness did so without the knowledge or consent of the parties. *M'Craw* v. *Gentry*, 3 *Camp.* 232. 4 *Taunt* 220. In these cases, the execution may be proved, by proving the handwriting of the party to the deed; or by any person present at the execution, though he is not indorsed as a witness, (*Com. Dig. tit.* Evidence, *B.* 3.) or by proof of an admission of the party himself that he executed that deed.

Proof of the party's signature.

And proof of the party's handwriting is a sufficient ground for presuming, that the deed was, as it purports to be, sealed and delivered. 1 *Phill. Ev.* 458., *and cases there cited.*

To prove a deed, the attesting witness must be called, though it be an issue directed to try a question as to the date, not existence of the deed. *Edinburgh* v. *Crudell*, 2 *Stark. N. P.* 284.

Even if the deed be cancelled.

And even if the deed be cancelled, the subscribing witness must be called to prove the execution. *Per* Lord *Kenyon*, C. J. in *Breton* v. *Cope*, *Peake's Rep.* 30. 1 *Phill. Ev.* 446, 447.

Death bed declarations in civil cases.

Dying declarations, *i. e.* declarations made under the impression of approaching death, have been admitted in civil cases when they have been made by attesting witnesses to an instrument.

The declaration of a person who having set his name as subscribing witness to a bond, in his dying moments, begged pardon of heaven for having been concerned in forging the bond, was admitted as evidence of the forgery by *Heath* J., on the authority of *Wright* d. *Clymer* v. *Littler*, 3 *Burr.* 1244. 1245. 1 *Blac. Rep.* 345. *S. C.*, where similar evidence of a dying confession by a subscribing witness to a will had been received by *Willes* C. J., and afterwards approved by the court of K. B. Lord *Mansfield* C. J. on that occasion said, "the account was a confession of great iniquity, and as the dying person could be under no temptation to say it, but to do justice, and ease his conscience, I am of opinion the evidence was proper to be left to the jury." Cited by Ld. *Ellenborough* C. J. in *Aveson* v. *Lord Kinnaird*, 6 *East*, 195. 1 *Stark. Ev.* 101. 1 *Phill. Ev.* 223.

So, in the case before *Heath* J., cited in *Aveson* v. *Ld. Kinnaird*, 6 *East*, 195., the confession of an attesting witness to a bond, who, in his dying moments, begged pardon of heaven for having been concerned in forging it, was received; for, like *Wright* v. *Littler*, the declaration amounted to a confession by the party himself of a very heinous offence which he had committed, and was part of the *res gestæ*. *Vide* 2 *B. & C.* 607, 608. But the court will not extend this exception to the general rule of not receiving evidence unless upon oath, and with opportunity for cross examination. "The case of the subscribing witness seems to be founded on this; he must have been called as a witness if he had been alive, and it would then have been competent to prove by examination his declarations as to the forgery of the bond. Now the party ought not, by the death of the witness, to be deprived of obtaining the advantage of such evidence." *Per Bayley* J. *S. C. Et vide per Ld. Ellenborough*, 6 *East*, 196. p. 990. Upon these grounds, in *Doe* d. *Sutton* v. *Ridgway*, *M.* 1820. 4 *B. & A.* 53. the court refused to admit the declaration of a dying person as to the relationship of the lessor of the plaintiff in ejectment to the person last seised. See 2 *Stark. Ev.* 463.

In criminal cases.

The dying declarations of a person respecting the circumstances under which he received a mortal injury, are constantly admitted in criminal prosecutions where the death is the subject of criminal enquiry, though the accused was not present when they were made, and had no opportunity for cross examination. See 1 *Phill. Ev.* 223. 1 *Stark. Ev.* 101.

This exception has been strictly construed. Thus in *R.* v. *Hutchinson*, tried before *Bayley* J., *Durham Spring Ass.* 1822., the prisoner was indicted for administering savin to a woman preg-

nant, but not quick with child, with intent to procure abortion. The woman was dead, and, for the prosecution, evidence of her dying declaration upon the subject was tendered. The learned judge rejected the evidence, observing, that although the declaration might relate to the cause of the death, still such declarations were admissible in those cases alone where the death of the party was the subject of enquiry. 2 *B.* & *C.* 608.

R. on the prosecution of *James Law* v. *W. Mead, H.* 1824. 2 *B.* & *C.* 605. Defendant having been convicted of perjury, a rule *nisi* for a new trial was obtained; whilst that was pending, the defendant *Mead* shot the prosecutor *Law*, and on showing cause against the rule, an affidavit was tendered of the dying declaration of the latter, as to the transaction out of which the prosecution for perjury arose. The court of K. B. held, that it could not be read; for dying declarations are admissible only where the death is the subject of the charge, and the circumstances of the death are the subject of the declaration.

So, in trials for robbery, the dying declarations of the party robbed are rejected. *Per Bayley* & *Best* Js. 1822. 1 *Phill. Ev.* 225.

Depositions before justices. It seems to be now settled that the depositions of witnesses taken in the absence of a prisoner before justices of peace, by virtue of stats. 1 & 2 *Ph.* & *M.* c. 10., and 2 & 3 *Ph.* & *M.* c. 13. (*post, tit.* Examination) are not admissible, unless the prisoner was present, and had the benefit of cross examination. See 1 *Stark. Ev.* 101. and the principle seems the same as to depositions taken before coroners, see 2 *Stark. Ev.* p. 489 to 492. *R.* v. *Chas. Smith, post, tit.* Examination.

Before coroners.

Subscribing witness compellable to give evidence. A subscribing witness to any instrument is compellable to give evidence respecting it; for the person, by subscribing his name, undertakes to give evidence at a proper time and in a proper manner. 10 *Mod.* 333.

Evidence relative to the Contents of Deeds.

Ambiguity. Evidence may be received to explain deeds, where there is a *latent* ambiguity; by a *latent* ambiguity is intended that which does not appear upon the face of the instrument, where every thing seems right and clear: but the meaning being rendered uncertain by the proof of some fact, the law permits the removal of the doubt by the like evidence. *Peake's Ev.* 112.

As where there was a devise to her cousin *I. C.*, and there were two of that name: evidence was admitted to shew which of the two was meant. *Peake's Ev.* 112.

So where a fine is levied of the manor of *D.*, the conusor having two manors of that name, evidence may be given to show which was meant. *Peake's Ev.* 113.

So where from the terms of the deed its intent as to its nature is equivocal: for instance, whether it is to enure as a contract of apprenticeship, or only as an agreement to be a mere servant, evidence is admissible to show the intent of the parties, and that some act was done further than that stated in the deed, though forming a part of the same transaction. *R.* v. *Laindon*, 8 *T. R.* 379. 1 *Phill. Ev.* 544.

But parol evidence cannot be admitted to contradict the terms of *a deed;* as in case of a lease to show that the lessee is to pay a given sum to a ground landlord, the lease only stipulating for payment of a sum certain to the lessor. *Peake's Ev.* 122.

In cases of fraud it is different, as where the party is imposed upon at the time of making the deed; where one sum is fraudulently substituted for another, and where part of the real consideration is omitted; there, parol evidence of the fact may be received. *Peake's Ev.* 116. 126. Also *R.* v. *Scammonden,* 3 *T. R.* 474.

Fraud.

In this case of *Scammonden* a certain estate had been sold, and the deed of conveyance expressed the consideration to have been 28*l.*, and a receipt was indorsed upon the deed for the sum of 28*l.* Evidence was admitted by the sessions that the purchaser had left 4*l.* 4*s.* besides, in the hands of his attorney, to pay the expences of a fine which was also levied of the premises; and they considered this as a part of the purchase-money, and accordingly decided the case before them upon the principle that 30*l.* had been paid for the estate in question. And the court of K. B. decided that the sessions had done right. And Ld. *Kenyon* C. J. said, it was clear that the party might prove other considerations than those expressed in the deed.

Parol evidence is admissible to show that a written contract, purporting to be made between *A.* and *B.*, as seller and buyer, was in fact made by *B.*, not on his own account, but as agent for a third person. *Wilson* v. *Hart,* 7 *Taunt.* 295. 1 *Moore, C. P.* 45. 1 *Phill. Ev.* 542.

Entries.

Entries.

The other division of that class of evidence relative to private writings, consists of entries in books, memoranda, and some particular cases, which are allowed from their own peculiar nature to be received as evidence, as inscriptions, almanacks, &c.

7 J. I. c. 12. Shop-books.

By stat. 7 *J.* 1. *c.* 12. No tradesman or handicraftsman shall be allowed to give his shop-book in evidence in an action for money due for wares delivered, or for work done above one year before the action brought. But this not to extend to mutual trading and merchandize between tradesman and tradesman. But though the statute says that a shop-book shall not be evidence after the year, yet it is not of itself evidence within the year, except under particular circumstances. *Bull. N. P.* 282. 1 *Phill. Ev.* 253.

Book of accounts.

A man's book of accounts is no evidence for the owner of the book, but for the adverse party; for his book cannot be of better credit than his oath, which would not serve in his own case. *Tr. pr. Pais,* 348.

Entries.

There are, however, cases in which entries made in books by the agents of persons who formerly stood in the situation in which the parties calling for the evidence stand, are admitted as evidence to prove what those agents would have proved had they been living at the time of trial. And the rule which determines the admissibility of such evidence is, that the persons making such entries must, by making them, charge themselves with a debt, or discharge others of a debt due to themselves; in other words, the entry must be against their own interest.

By a steward.

To prove soil and freehold, the entries made by a former steward of the manor in his day-book, of receipts of sums of money for trespasses committed upon the place in question were held to be good evidence, as the steward thereby charged himself with the receipt of money; and these entries may either be in his handwriting, or in a book signed in his handwriting. And the rule is, that if a steward's entry be sufficient to charge himself, it is admissible evidence. *Barry* v. *Bebbington*, 4 *T. R.* 514.

Entries in the books of a steward of a manor of receipts of rent, above thirty years old, and coming from the proper custody, are admissible in evidence, without proving the hand-writing of the steward. The rule is not confined to deeds or wills, but extends to letters and other written documents coming from the proper custody. It is founded on the antiquity of the instrument, and the great difficulty, nay, impossibility of proving the hand-writing of the party after such a lapse of time. *Wynne*, Bart. v. *Tyrwhitt*, *E.* 2 *G.* 4. 4 *B.* & *A.* 376. *See also R.* v. *Ryton*, 5 *T. R.* 259. *Fry* v. *Wood*, *Selw. N. P.* 535. *Dean and Chapter of Ely* v. *Stewart*, 2 *Atk.* 44.

By an attorney.

So, to prove the fact of a surrender of an interest in an estate, the books of the attorney, since deceased, who had made an entry of having prepared the writings, and of the charge for the same, as due to himself, and then *an entry that they were paid*, were admitted in evidence, and afterwards agreed by the Court to be so. *Warren* d. *Webb* v. *Greenville*, 2 *Str.* 1129.

So, to prove the real time of executing a lease to have been different from its actual date, an attorney's entry of charges by himself for making the lease, and of payment of those charges, was admitted as good evidence. *Doe* d. *Reece* v. *Robson*, 15 *East*, 33.

This, upon the ground that there was a total absence of interest in the persons making the entry to pervert the fact, and at the same time a competency in them to know it. And *Bayley* J. said, it had long been an established principle of evidence, that if a party, who has knowledge of the fact, make an entry of it, whereby he charges himself, or discharges another upon whom he would otherwise have a claim, such entry is admissible evidence of the fact, because it is against his own interest. 15 *East*, 35.

By a surgeon, of the day of birth.

So a written memorandum by a deceased man-midwife, stating that he had delivered a woman of a child on a certain day, and referring to his ledger, in which a charge for his attendance was marked as paid, was thought by the court of K. B. to have been properly received in evidence, upon an issue as to the child's age. This entry was made by a person, who, so far from having an interest to make it, had an interest the other way. For it appeared distinctly, from other evidence, that the work charged was actually done; and the discharge in the book repels the claim, which he would otherwise have had. *Higham* v. [illegible], 10 *East*, 109, 110. 1 *Phill. Ev.* 243.

By a father of his son's birth.

On a question, whether a testator at the time of making his will was of full age, a written memorandum by his deceased father, stating the time of his birth, has been admitted to be good evidence. *Herbert* v. *Tuckall*, *T. Raym*, 84., cited in *Brune* v. *Rawlins*,

7 *East*, 290. See *Wiken* v. *Law*, 3 *Stark*. 63. Vol. III. *tit.* Parish Registers.

By church-wardens. Entries in public books.

Where a question arose, whether of two parishes *A.* or *B.* ought to contribute in certain proportions, entries by the former wardens of *A.* of their having received certain sums from the parish of *B.*, in consequence of *B.* having disputed the question with *A.*, were held to be good evidence on the part of *A.* as against *B.* by reason that the wardens by such entries charged themselves with the receipt of such sums. *Stead* v. *Heaton*, 4 *T. R.* 669.

By a landlord.

But entries by a third person, deceased, in his books, of receipts of rent from his tenant for a particular estate, are not admissible to prove the identity of the land, in a cause between two others. *Outram* v. *Morewood*, 5 *T. R.* 121.

By a rector or vicar.

The entry in this case was a mere private memorandum, to remind the person that he had received his rent. Evidence of this kind can only be admitted to *restrain*, not to *advance*, the interest of the party who makes it. What a man does in his closet ought not to affect the rights of third persons. There is only one instance in which this is allowed, namely, the books of an incumbent respecting his tithes. But that has been always considered an excepted case. "The general rule," said Ld. *Hardwicke*, in the case of *Glynn* v. *The Bank of England*, 2 *Ves.* 43. "is, that a man cannot make evidence for himself. What he writes or says for himself cannot be evidence of his right, and consequently cannot be for his representative claiming in his right and place. I will not say (added Ld. *Hardwicke*), how length of time may vary it; but otherwise it cannot be any more than for himself. 1 *Phill. Ev.* 241, 242. *R.* v. *Debenham*, 2 *B. & A.* 185.

An entry in the public books of a corporation, is not evidence for them, unless it be an entry of a public nature.

Marriage v. *Lawrence*, *M.* 60 *G.* 3. 3 *B. & A.* 142. Trespass for taking three sacks of wheat. Pleas, the general issue and several justifications, in which the defendant justified as water bailiff of the borough of *Malden*, in the county of *Essex*, and the question was, as to the right of the corporation of that place to certain tolls. At the trial before *Garrow* B. at the assizes for the county of *Essex*, 1819, the defendant, in support of his case, offered in evidence an entry from the books of the corporation, dated 18th year of *Hen.* 8, intitled, "*Malden Curia Electionis officiariorum ibidem tenta die Veneris primo post festum Epiphaniæ domini anno R. Henrici* 8. 13*mo*." The entry was to the following effect: It stated, that two ships loaded with coal, had, on the 17th *June* preceding arrived within the liberties of the borough; and that the master had, without any licence from the bailiffs of the borough, and without paying any fine, delivered certain chaldrons of the coal, and, after having been warned of this infringement of the rights of the borough, had proceeded to finish the delivery of their cargo; upon which the bailiff and council of the borough assembled in the *Motehall* on the 23d *June*, and after consulting the charter of the corporation, resolved to seize the ships. The ships having been seized, their masters, *W. B.* and *J. S.*, afterwards came and admitted their offence, and submitted themselves to the bailiffs. It then stated a fine of 40*s.* imposed by the bailiffs, of which 36*s.* was remitted, and 4*s.* paid. The entry was signed "*P. Goldbourne, clericus burgi prædicti.*" The books in which this entry was found were the public books of the corporation, and contained

the records, &c. of the sessions, which, by the charter of the borough they were entitled to hold. The learned judge rejected the evidence, and the plaintiff obtained a verdict. On motion for a new trial on the rejection of this evidence, it was contended that the books were of a public nature, and were therefore receivable in evidence.—*Abbott* C. J. It seems to me that this evidence was rightly rejected. This was no more than a minute made by a party in his own memorandum-book, and it was, in fact, making evidence for himself. It is said these were public books in which this entry was found; but they were not public books for all purposes. If this entry had been of a public nature, it would have been different; but this not being so, the rules of evidence require that it should not be received.—*Bayley* J. This falls within the rule of evidence which prohibits a party from making evidence for himself. If a corporation enter their own private business in the public court-book, that circumstance will not alter the nature of the entry; for if the entry apply to private transactions alone, it will still fall within the rule applicable to private books, which cannot be given in evidence for the party to whom they belong. *Holroyd* J. The book in which the entry is made can make no difference, for it will not make the entry of a public nature because it is found in a public book; and if it be of a private nature, it is not receivable in evidence. *Best* J. concurred. R. R.

Marriage v. Lawrence.

Goss v. *Watlington*, *M.* 2 *G.* 4. 3 *Brod. & Bing.* 132. In an action against a surety, who had entered into a joint bond with his principal on his appointment to a public office, conditioned for payment of all monies received, and further, that the principal should from time to time enter into certain books all monies by him received; the Court of C. P. held, that entries in such books by the principal, were, after his death, evidence against the surety; but they gave no opinion whether such entries would have been evidence without such a special clause in the condition, or with it in his life-time. They held that receipts given by the principal were not admissible in evidence against the defendant, the surety. *Vide* 1 *Phill. Ev.* 246. *Peake's Ev. Add.* 5 *edit.*

Almanacks.

The examination of an almanack that such a day of the month was *Sunday*, was ruled to be sufficient; and that a trial of this by a jury is not necessary, although it is a matter of fact. *Cro. Eliz.* 227.

The reason why the calendar in an almanack is allowed to be evidence seemeth to be, because the said calendar is part of the book of common prayer, which is established by act of parliament.

Inscription of grave stones.

A copy of an inscription on a grave stone has been allowed to be given in evidence. See Ld. *Eldon*'s observations in *Whitlocke* v. *Baker*, 13 *Vez.* 514. 1 *Phill. Ev.* 227. and *Edwards* v. *Harvey*, 1 *Cowp. Ch. R.* 39.

And recitals in family deeds, monumental inscriptions, engravings on rings, old pedigrees hung up in a family mansion, and the like (in which it is improbable that a description would be suffered to continue if erroneous), are all of them admissible, upon the principle that they are the natural effusions of a party, who must know the truth, and who speaks upon an occasion when his mind stands in an even position, without any temptation to exceed or fall short of the truth. 1 *Phill. Ev.* 227.

Handwriting.

As relating to the evidence of written instruments, *the mode* of proving the handwriting of an individual is now fit to be considered.

Handwriting.

In general cases the witness should have gained his knowledge from *having seen the party write;* but under some circumstances that is not necessary; as where the handwriting to be proved is of a person residing abroad, one who has frequently received letters from him in a course of correspondence would be admitted to prove it, though he had never seen him write. *Bull. N. P.* 236.

It is not necessary that a witness should swear that the writing intended to be given in evidence is actually the handwriting of any particular individual; but his *belief* that it is such is sufficient.

This belief must be founded upon rational grounds: either he must have seen the individual in question often write his name, or have received letters from him in a course of correspondence, not having actually seen him write. (*a*)

But he is to form his opinion merely and only from looking at the handwriting in question.

Similitude of hands.

It seems to be generally holden, since the reversal of the attainder of *Algernon Sidney*, that similitude of hands is not evidence in any criminal case, whether capital or not capital 2 *Haw. c.* 46. § 15 1 Ld. *Raym.* 39. 9 *Howell's St. Tri.* 817.

Imitated handwriting.

In *Revett* v. *Braham*, 4 *T. R.* 497. where the question was, whether a will had been forged. The court of K. B. on a trial at bar, admitted two clerks of the Post Office, whose business it was to inspect franks, and detect forgeries, to prove from their general knowledge of writing, whether the writing in question was a genuine or an imitated hand. But in a subsequent case, Ld. *Kenyon* C. J. said, that *such evidence* was wholly inadmissible; and that though in *Revett* v. *Braham*, it was received, yet that in his charge to the jury, he had laid no stress upon it. *Cary* v. *Pitt*, *Peake's Ev. App.* (*b*).

The true distinction, says Mr. *Peake*, (*Ev.* 102.) seems to have been taken by Mr. Baron *Hotham*, on the trial of the *King* v. *Cator*, 4 *Esp.* 117. where the defendant, being indicted for publishing a written libel, and a person from the Post Office who had never seen him write, being called as a witness, that learned Judge permitted the witness to give *general evidence*, that the writing appeared to be in a feigned hand; but when the witness was asked, whether, on comparing such handwriting with papers proved by others to be the genuine handwriting of the defendant, he could

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(*a*) A witness who had never seen the defendant, but had corresponded with a person of the defendant's name living at *Plymouth Dock*, where defendant resided, and where according to other evidence there was no other person of that name, stated, that the hand-writing of certain letters was that of the person with whom he had corresponded. *Best* C. J. held, that this evidence was sufficient to admit the letters to be read against the defendant. *Harrington* v. *Fry, June* 16, 1824. 3 *Stark. R.* 90.

(*b*) The opinion of an artist in painting is evidence as to the genuineness of a picture. 1 *Phill. Ev.* 276.

say it was the disguised hand of the same person, his lordship rejected the evidence attempted to be introduced by such examination; because it arose only from comparison of hands.

And it is fully established by the following case that such evidence, if it be admissible, is entitled to very little or no weight.

Evidence of inspector of franks to prove forgery.

Gurney and others v. *Langlands*, *H.* 2 *G.* 4. 5 *B.* & *A.* 330. Feigned issue, directed by the court of K. B. to try whether the supposed signature of the plaintiff to a certain warrant of attorney was forged. At the trial, before *Wood* B. at the summer assizes 1821, for *Surry*, an inspector of franks at the post office, who had never seen the party write, was called and asked the following question: — "*From your knowledge of handwriting, do you believe the handwriting in question to be a genuine signature or an imitation?*" The question was objected to, and the cases of *Revett* v. *Braham*, and *R.* v. *Cator* (*supra*,) were cited in support of the evidence, but *Wood* B. rejected the evidence. On motion for a new trial and cause shown against it, *Abbott* C. J. said, I have long been of opinion, that evidence of this description, whether in strictness of law receivable or not, ought, if received, to have no great weight given to it. This was an issue directed by the court, in order to enable them to come to a satisfactory conclusion upon a rule pending before them. The other evidence in this case was of so cogent a description as to have produced a verdict satisfactory to the judge who tried the cause; and I can pronounce my judgment much more to my own satisfaction upon a verdict so found, than if this evidence had been admitted, and had produced a contrary verdict. For I think it much too loose to be the foundation of a judicial decision, either by judges or juries. The rule, therefore, for a new trial must be discharged. The other judges concurred. And *Best* J. said, it is impossible for any person to speak to handwriting being an imitation, unless he has seen the original; and it does not appear to me necessarily to follow, that an inspector of franks has peculiar means of ascertaining imitated handwriting. See 1 *Phill. Ev.* 474, 475. *

But where the antiquity of the writing makes it impossible for any living witness to swear he ever saw the party write; as where a parson's book was produced to prove *a modus*, the parson having been long dead, a witness who had examined the parish books in which was the same person's name, was permitted to swear to the similitude of the handwriting, for it was the best evidence for the nature of the thing, as the parish books were not in the plaintiff's power to produce. *Bull. N. P.* 236. 1 *Phill. Ev.* 473.

III. Of the Evidence of Witnesses.

Examination on the *voir dir*

Previous to admitting a witness to be sworn, it is often necessary to examine him upon what is termed the *voir dire* (*a*); which is done for the purpose of ascertaining whether there be any objection in law to his being admitted as a witness upon the case before the court; and such an objection is valid for that purpose,

(*a*) *Voir dire, veritatem dicere*, is when it is prayed upon a trial at law that a witness be sworn, that he shall true answer make to all such questions as the Court shall demand of him. 3 *Black. Com.* 332.

when it appears in the course of the examination, that the witness is incompetent to give evidence by reason of some civil disability, or by reason of his being directly interested in the event of the cause at issue.

But if it is discovered during any part of the trial that a witness is interested, his evidence will be struck out. 1 *Phill. Ev.* 123. 1 *T. R.* 720. *Wightw.* 64. 2 *Campb.* 14.

Concerning the contents of written instruments.

And upon this examination of a witness, as to his situation, he may be asked any questions concerning instruments he has executed, &c. without producing those instruments. *Peake's Ev.* 182.

Witness examined upon the *voir dire* stated that he was an occupier, &c. but not rated. The rate need not be produced.

Accordingly, in the case of the *King* v. *Gisburn*, 15 *East*, 57. on a question of settlement, when the point for the consideration of the court of *K. B.* was, whether a witness, who after having admitted on his examination upon the *voir dire*, that he was the occupier of a cottage in the appellant township of the annual value of 25*s.*, but that he had never been charged with or paid any public rate or tax in that township, could be examined without producing the rate to shew that he was not rated? The Court held that the witness was competent upon the *voir dire*. That what he answered must be taken for better for worse, and that if he should answer falsely he might be indicted for perjury.

So also, it is a rule, that when the objection to the competency of a witness arises from his answer to a qnestion on the *voir dire*, he may in the same way do away the objection, and restore himself by parol; but if the fact appears in any other way, as, if the witness is proved by other evidence to have been a bankrupt, in such case it is necessary to answer the objection by the best evidence, that is, by production of the certificate itself. By Ld. *Kenyon*, in *Botham* v. *Swingler*, 1 *Esp.* 164. *The Butchers' Company* v. *Jones*, 1 *Esp.* 162. *S. P.*

Exceptions by reason of kindred.

It is to be observed, that there be many circumstances that disable a juror, that are not sufficient exceptions against a witness. Thus the exception of kindred is a good cause of challenge against a juror, but not against a witness; therefore the father may be a competent witness for or against his son, or the son for or against his father. These and the like exceptions may be to the credit or credibility of the witness, but are not exceptions against his competency. 2 *Hale*, 276.

Difference between exceptions to the credit, and to the competency of a witness.

The exceptions to a witness are of two kinds; 1st. to the *credit* of the witness, which do not at all disable him from being sworn, but yet may blemish the credibility of his testimony; and in such case the witness is to be allowed, but the credit of his testimony is left to the jury; 2d. to the *competency* of the witness, which exclude him from giving his testimony, and of these exceptions the Court is the judge. 2 *Hale*, 276, 277.

In *R.* v. *Teal*, 11 *East*, 309. it was decided that a woman who had deposed on oath, at the instigation of the defendant, to the prosecutor's being the father of her bastard child, was a competent witness to prove that in truth the defendant was the father; and consequently to prove herself forsworn; nevertheless, the objection went strongly to her credit. *See also Rands* v. *Thomas*, *T.* 56 *G.* 3. 5 *M. & S.* 244. *Peake's Ev.* 136. 1 *Phill. Ev.* 30. 42. *Hatfield* v. *Thorp*, *E.* 3 *G.* 4. 5 *B. & A.* 589. 2 *Phill. Ev.* 478. In the case of a will, where one of the three attesting witnesses

was the husband of a devisee, who took the remainder in fee after the death of the first devisee for life, and the question was, whether the will was duly executed to pass real estates; the court of K. B. determined that it was not duly executed.

Husband and wife. Husband and wife cannot be admitted to be witnesses for each other, because their interests are absolutely the same; nor against each other, because contrary to the legal policy of marriage. However, there are some exceptions to this rule. *First*, in the case of high treason it has been said that a wife shall be admitted as a witness against her husband, because the tie of allegiance is more obligatory than any other.(a) *Secondly*; by stat. 5 *G.* 4. *c.* 98. § 37. (and previously by stat. 5 *G.* 2. *c.* 30.) the wife of a bankrupt may be examined by the commissioners touching his estate, but not his bankruptcy. *Thirdly*, if a woman be taken away by force and married, she may be a witness against her husband indicted on stat. 3 *H.* 7. *c.* 2. against the stealing of women: for a contract obtained by force has no obligation in law. So, upon an indictment on stat. 1 *J.* 1. *c.* 11. for marrying a second wife, the first being alive, though the *first* cannot be a witness, yet the *second* may, the second marriage being void. In some cases from necessity, a wife *de jure* may be a witness against her husband on an indictment for a personal tort done to herself In Ld. *Audley's* case she was allowed to be a witness to prove that her husband assisted to a rape upon her; and this has been since confirmed by the greatest authorities. See them collected in 1 *Phill. Ev.* 79. So in *Azyre's* case on an indictment for beating his wife, Ld. *Raymond* suffered her to give evidence. I *Stra.* 633. The wife is always permitted to exhibit articles of the peace against her husband; and the Court will not receive affidavits on the part of the defendant, to contradict the truth of the articles exhibited against him, and prevent his giving surety. *Lord Vane's case*, 13 *East*, 171. (*a*). *R.* v. *Doherty*, *ib. S. P.* So the affidavit of a married woman has been admitted to be read on an application to the court of K. B. for an information against the husband, for an attempt to take her away by force, after articles of separation: and it would be strange to permit her to be a witness to ground a prosecution upon, and not afterwards to be a witness at the trial. *Bull. N. P.* 286, 287.

On the trial of a man for the murder of his wife, her dying declarations are evidence against him. *Woodcock's case*, 1 *Leach*, 500. *John's case*, 1 *East's P. C.* 357. 1 *Phill. Ev.* 223, 224.

Jagger's case. *Jagger* was convicted, on the evidence of his wife, of an attempt to poison her by giving her a cake of parkin mixed with arsenic. *Per* the twelve judges unanimously. The evidence of the wife was rightly received *ex necessitate*, to protect her from a personal injury, but this rule would not extend to other cases where that necessity for her personal protection does not exist, and the rule will not hold *è converso*; for the wife in such a case could not be received as evidence for her hushand. *R.* v. *Jagger*, Opinion of the judges delivered by *Rooke* J., *Yorkshire Lent Ass.* 1797. Cited *per Garrow* B. from Mr. Justice *Holroyd's MS.* *R.* v. *Whitehouse*, indicted for shooting at his wife with intent to murder her. *Stafford Sum. Ass. July* 1818.

(a) But there are authorities the other way. 1 *Phill. Ev.* 79. citing *Brownl.* 17.

R. v. *Wood, M. Sitt.* 26 *G.* 3. On an indictment for forcibly breaking open the house of a third person, and assaulting the defendant's wife, Ld. *Mansfield* C. J. admitted the defendant's wife as a witness to prove the assault on her. *MS.*

A wife shall not be called in any case to give evidence, even *tending* to criminate her husband.

On an appeal against an order of removal of a pauper, and also of a woman as his wife: the respondent's having proved the marriage, the appellants called the pauper for the purpose of proving his former marriage with another woman, but he swore directly the reverse; they then called the woman to prove the alleged former marriage. The sessions rejected the witness; and the court of K. B. determined, that she was not competent to give such evidence. Mr. J. *Ashhurst* and Mr. J. *Grose*, the only judges present in court, were of opinion, that a husband and wife are not permitted, from a principle of public policy, to give any evidence that may even *tend to criminate* each other; that the objection is not confined merely to cases where they are *directly accused* of a crime; but even in collateral cases, if their evidence *tends that way*, it shall not be admitted: for although the evidence of the one could not be used against the other on a subsequent trial for the offence, yet it might lead to a criminal charge, and cause the other to be apprehended. *R.* v. *Inh. of Cliviger, H.* 28. *G.* 3. 2 *T. R.* 263.

The rule laid down in the case of the *King* v. *Cliviger* was much discussed in a very late case, the case of the *King* v. *the Inhabitants of All Saints in Worcester, E. T.* 1817. in which the court of K. B. was of opinion, that it had been expressed in terms much too general and undefined. That case was as follows. On an appeal against the removal of *Esther Newman*, otherwise *Esther Willis*, to the parish of *All Saints*, as to her maiden settlement, the respondents called a woman of the name of *Ann Willis* for the purpose of proving this fact, namely that at a certain time she married one *G. Willis*. The appellants objected to her competency, alleging that they were prepared to prove his marriage with the pauper at a subsequent time. The quarter sessions admitted the evidence of the witness, who proved her marriage with *G. W.* about fourteen years ago: and cohabitation between this witness and *G. W.* as man and wife, was proved by other evidence. The respondents then proved, that the pauper gained a settlement in her own right in the appellant parish, and that she had about three years ago married *G. W.*; and this marriage was proved as well by the pauper herself, as by a witness present at the time of the marriage. The counsel for the appellants contended, that the evidence of *Ann Willis* ought to be struck out. But the court of quarter sessions over-ruled the objection, and stated the case for the opinion of the court of K. B. In the course of the argument, which took place on shewing cause against the rule for setting aside the judgment of the court below, the case of the *King* v. *Cliviger* was brought into discussion. And after much argument the court of K. B. was of opinion, in the first place, that the case cited (admitting it to its utmost extent), did not shew the evidence to be inadmissible at the time that it was offered: for the wife did not contradict the husband, as he had not been examined; she did not by her evidence directly criminate him, as the proceeding related to other matters, and not to any criminal charge against him, and her evidence could never be used against him, nor be made the ground work of any future criminal proceeding; the evidence,

therefore, was unobjectionable, when received, and could not properly be expunged. The Court were further of opinion, that the rule, laid down in the case of the *King* v. *Cliviger*, was too large and general; that the former wife would have been competent to prove her marriage though the second marriage had been first proved by the respondents, and that, even if the second marriage had been proved by the appellants, still she would be competent, and the respondents in reply might have called her to prove the former marriage; for her evidence did not directly criminate the husband, and never could be used against him, nor could he ever be affected by the judgment of the court founded upon such evidence.

Rule laid down in R. v. Cliviger too general.

The result therefore appears to be, that, on the trial of an appeal against an order of removal (and, upon the same principle, in any suit or proceeding between third persons) a husband or wife is a competent witness to prove a former marriage, even after proof of a second marriage, although, perhaps, the witness would not be *compellable* to answer such questions. And the reasoning, upon which this rule is founded, is equally strong to shew, that the one may be called as witness to disprove what has been stated by the other; and that either the party who has called the one, or the opposite party may call the other for the purpose of contradicting. Indeed, the reasoning is much stronger in this case than in the former, where the husband or wife is allowed to prove the first marriage; for although they may directly contradict each other as to a particular fact, it will not follow that either party has been guilty of perjury. And as the most serious inconveniences might result from a different rule, which would be a bar to the full and complete investigation of the subject, in cases too where the property, the character, or even the life of a party may be at stake, it appears to be reasonable and necessary to the ends of justice, that such evidence should be admitted. 1 *Phill. Ev.* 72. 75.

Result of cases.

If a woman be divorced *a vinculo matrimonii*, she cannot prove a contract, or any thing else which happened during the coverture. Any fact arising after the divorce, she may prove. *Monroe* v. *Twisleton, Peake's Ev. App.* p. xxxix.

In the case of *Campbell* v. *Twemlow*, 1 *Price*, 81. The Court of Exchequer inclined to the opinion, that a woman who had passed as the wife of a man but was not so, could not be examined as a witness for him. *Lord C. B. Richards* cited a case, before *Lord Kenyon* on the *Chester Circuit* in the year 1782, where, on a trial for forgery, the prisoner called a woman as his witness, whom he had himself in court represented to be his wife, but afterwards, on hearing an objection taken to her competency, denied that she was married to him, and *Lord Kenyon* would not permit him to call her, after having represented her as his wife. 1 *Phill. Ev.* 82. *Peake's Ev. Add.*

Evidence of a woman, living with the party as wife.

Want of discretion is a good exception against a witness; on which account alone it seems that an infant may be excepted against. 2 *Haw. c.* 46. § 27.

Want of discretion.

But if an infant be of the age of fourteen years, he is as to this purpose, of the age of discretion to be sworn as a witness; and even if under that age, yet if it appear that he hath a competent discretion, he may be sworn. 2 *Hale*, 278.

Infants.

And in many cases an infant of tender years may be examined, where the exigence of the case requires it; which possibly, being fortified with concurrent evidences, may be of some weight; especially in cases of such crimes as are practised upon children. 2 *Hale*, 279, 284.

In *Brazier's case*, 1 *East*, *P. C.* 443, 444. 1 *Leach*. 199. On an indictment for assaulting an infant of five years of age with intent to ravish her, it was agreed by all the judges, that children of any age may be examined on oath, if capable of distinguishing between good and evil: but that they cannot be examined in any case without oath. 2 *Stra*. 700. 1 *Atk*. 29. 4 *Blac. Com.* 214.

When the child has appeared not sufficiently to understand the nature and obligation of an oath, judges have often thought it necessary, for the purpose of justice, to put off the trial of the prisoner, directing that the child in the mean time shall be properly instructed. *Vide* 2 *Bac. Abr. by Gwillim*, 577. *notis*. 1 *Phill. Ev.* 19. and Vol. III. *tit.* Infant, § II.

[On this head, see title Rape, Vol. V. p. 3.]

Lunatics.

Lunatics and other persons who are subject to temporary fits of insanity, may be witnesses in their lucid intervals, if they have sufficiently recovered their understandings.

Deaf and dumb.

And a person deaf and dumb is not on that account incompetent, but, if he has sufficient understanding, may give evidence by signs with the assistance of an interpreter. *Ruston's case*, 1 *Leach*, 408. 1 *Phill. Ev.* 18. 20.

Infidels.

Infidels cannot be witnesses, that is, such who profess no religion that can bind their consciences to speak truth. *Bull. N. P.* 292. But when any person professes a religion that will be a tie upon him, he shall be admitted as a witness, and sworn according to the ceremonies of his own religion; for it would be ridiculous to swear a witness upon the holy evangelists, who did not believe those writings to be sacred. Thus *Jews* are always sworn upon the old testament (*a*); *Mahomedans* on the Koran; those of the *Gentoo* religion according to the ceremonies of that religion. *Id.*

Form of swearing.

Jews.

Others.

So the depositions of witnesses professing the *Gentoo* religion, who were sworn according to the ceremonies of their religion, taken under a commission out of chancery, were admitted to be read as evidence. *Will.* 538. 1 *Atk.* 21. 1 *Phill Ev.* 22.

At the *O. B. Dec. Sess.* 1804, *Erpune*, a native of *China*, being examined as a witness before *Graham* B. on an indictment against *Ann Alsley* and *Thomas Gunn*, for felony, was sworn according to the form of courts of *China*, viz. by holding a saucer in his hand, which he dashed to pieces at the conclusion of the oath, believing, as he stated, that God would cause his body to be cracked, as he

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(*a*) See the different modes of swearing Jews, Turks, Gentoos, &c. 1 *Phill. Ev.* 23.

A witness who declines swearing on the New Testament, though he professes Christianity, may be allowed to swear on the Old Testament, if he considers that mode binding on his conscience. Per *Bosanquet*, Serjt. in *Edmonds*, *administrator*, v. *Rowe*. *Lancaster Spr. Ass.* 1824. 1 *Ry. & M.* 77.

Sells v. *Hoare and others*, *E.* 1822. 7 *B. Moore*, p. 36. Where a witness was sworn on the gospels at the trial, and it was afterwards discovered that he was a jew, and had been sworn in a false name. The court of C. P. held, that any objection as to his testimony was too late after verdict, and that the oath as taken by the witness was binding on him, as it would subject him to the penalties of perjury if he had sworn falsely.

cracked that saucer, if he did not tell the truth. *Sess. Pap.* 1804. *and* 1805. *p.* 62. *Peake's Ev.* 138. (n.) *5th edit.*

Scotch covenanter.

In like manner a *Scotch* covenanter has been permitted to swear by holding up his hand. *Mildrone's case,* 1 *Leach,* 412.

For oaths are to be administered to all persons according to their own opinions, and as it most affects their consciences.

And in a case before Mr. Justice *Buller,* that learned judge would not permit the particular opinions of a man professing the christian religion to be examined into, but asked him, whether he believed in God, the obligation of an oath, and a future state of rewards and punishments. *R.* v. *Taylor, Peake's Rep.* 11.

But a person who has no idea of the being of a God, or a future state, is not admissible. *White's case,* 1 *Leach,* 430.

Time for asking witness whether the form of an oath is binding on his conscience.

The most correct and proper time for asking a witness whether the form in which the oath, as about to be administered to him, is one that will be binding upon his conscience, is before that oath is administered; but, inasmuch as it may occasionally happen that the oath will be administered in the usual form, before the attention of the court or party or counsel is directed to it, that question may properly be afterwards asked. And if, in answer to such question, the witness shall declare in the affirmative, namely that he does consider the oath which he has taken as binding upon his conscience, he cannot then be further asked, whether there be any other mode of swearing, that would be more binding than that which has been used. If the witness says, he considers the oath as binding upon his conscience, he does in effect affirm, that, in taking that oath, he has called his God to witness, that what he shall say will be the truth, and that he has imprecated the divine vengeance upon his head, if what he shall afterwards say is false; and, having done that, it is perfectly unnecessary and irrelevant to ask any further questions. *Resolution of the Judges delivered by* ABBOTT C. J. *in the Proceedings on the Bill of Pains and Penalties against the Queen in the House of Lords, August* 24, 1820. 2 *Brod. & Bing.* 284. 2 *Hans. Parl. Deb.* (*N. S.*) 913. 915. *See Peake's Ev. 5th edit.* 139. 1 *Phill. Ev.* 282.

Quakers.

By stats. 7 & 8 *W. c.* 34. and 22 *G.* 2. *c.* 46. § 36. No *Quaker* shall be permitted to give evidence in any *criminal* case, except upon oath.

Judge or juror being a witness

It seems agreed that it is no exception against a person's giving evidence either for or against a prisoner, that he is one of the judges or jurors who are to try him. 2 *Haw. c.* 46. § 17.

But where a juror is called upon to give his evidence, he ought to give it upon oath openly in court, and not be examined privately by his companions. *Bac. Abr. Evid. A.* 2. 3 *Blac. Com.* 375. *Kel.* 12.

Witness being an accomplice. (*a*)

It hath been long settled that it is no exception against a witness that he hath confessed himself guilty of the same crime, if he hath not been indicted for it; for if no accomplices were to be admitted as witnesses, it would be generally impossible to find evidence to convict the greatest offenders. 2 *Haw. c.* 46. § 18. 1 *Phill. Ev.* 35, 36.

Accomplices.

Although an accomplice is a competent and admissible witness, yet if there be no other evidence to corroborate his testimony,

(*a*) See Approver, *ante,* p. 210.

neither juries nor judges incline to convict a prisoner upon it. For he that declares himself guilty of an infamous crime, and wants only an attainder of it to render him totally incompetent, deserves only little credit. And the hopes he may have of earning his own pardon, or of being excused from prosecution and punishment by giving such testimony, is a further reason for suspecting his veracity. 2 *MS. Sum.* 210.

However, if the testimony of an accomplice be confirmed so far as his testimony relates to one prisoner, but is not confirmed with respect to another prisoner, the latter may be convicted on the testimony of the accomplice, if the jury deem him worthy of credit. *Per Bayley* J. *R.* v. *Dawber and others, York Sp. Ass.* 1821. 3 *Stark. R.* 34.

The practice, therefore, is to advise the jury to regard the evidence of an accomplice, only so far as he may be confirmed, in some part of his testimony, by unimpeachable testimony. It is not necessary, that he should be confirmed in every circumstance which he details in evidence; for there would be no occasion to use him at all as a witness, if his narrative could be completely proved by other evidence free from all suspicion. Nor need it appear from the confirmatory evidence, that he speaks truth with respect to all the prisoners, or with respect to the share which each had in the transaction. But if the jury are satisfied, that he speaks truth in those parts in which they see unimpeachable evidence brought to confirm him, that is a ground for them to believe, that he also speaks truly with regard to the other prisoners, as to whom there may be no confirmation. By *Thomson* B. in *R.* v. *Swallow and others*, Trials at *York*, *Jan.* 1813, on special commission, *p.* 3. 17. 50. 150. 165. 201. 1 *Phill. Ev.* 40.

Defendants in an information against whom no evidence given.

Also it hath often been adjudged that such of the defendants in an information, against whom no evidence is given, may be witnesses for the others. 2 *Haw. c.* 46. § 18.

But if there be the slightest evidence to charge one defendant, he cannot be a witness for the others; because the question, as to his liability, must wait the final event of the verdict, and the jury may, of their own knowledge, have further information of the fact, than what they collect from the witnesses in court. *Peake's Ev.* 148.

It hath been also adjudged that where three persons are sued in three several actions on the statute for a supposed perjury in their evidence concerning the same thing, they may be good witnesses in such actions for one another. 2 *Haw. c.* 46. § 18.

Witness an alien.

It seems agreed, that it is no good exception against a witness, that he is an alien. 2 *Haw. c.* 46. § 28.

Outlawry.

It seems clear at this day that outlawry in a personal action is not a good exception against a witness, as it is against a juror. 2 *Haw. c.* 46. § 21.

Exceptions by reason of judgments.

It seems agreed that an attainder, judgment, or conviction of treason, felony, piracy, premunire, perjury, or forgery on stat. 5 *El.*, and also a judgment in attaint for giving a false verdict, or in conspiracy at the suit of the king, and also judgment for any heinous crime to stand on the pillory, or to be whipped or branded, are good causes of exception against a witness, while they continue in force. 2 *Haw. c.* 46. § 19. *Bull. N. P.* 291.

In the *case of the Ville de Varsovie and others, May 13th,* 1817, *in the Admiralty Court,* 2 *Dods. Rep.* 174. Sir WILLIAM SCOTT determined, on great consideration, that a conviction for a conspiracy to commit a fraud would not render an affidavit of the convict inadmissible. 1 *Phill. Ev.* 27, 28., relied on by *Abbott* C. J. in *Crowther* v. *Hopwood, Jan. 12th,* 1821. 3 *Stark. R.* 21. *S. P.*

Conviction of conspiracy.

Note: The party who would take advantage of this exception must have a copy of the record of conviction ready to produce in court; for until the judgment upon the verdict be regularly entered, the witness is not deprived of his legal privileges. *Bull. N. P.* 292. 1 *Cowp.* 3.

Conviction of felony.

If it be objected against receiving a person's testimony, that he has been convicted of felony, and his punishment is unexpired, such objection must be supported by the production of the record; and no admission by the party himself will be sufficient. In this case Ld. *Ellenborough* C. J. said, "it cannot be seriously argued that a record can be proved by the admission of any witness; he may have mistaken what passed in court, and may have been ordered on his knees for a misdemeanor. This can only be known by the record, and there is no authority for admitting evidence of it." *R.* v. *Inh. of Castell Careinion,* 8 *East,* 77.

How proved.

A person convicted of felony, who is admitted to his clergy, and burnt in the hand, or has been transported pursuant to stat. 4 *G.* 1. *c.* 11. is thereby re-enabled to be a witness; for the burning in the hand, or transportation substituted by act of parliament, operates as a statute pardon. 2 *Haw. c.* 33. § 127. *Bull. N. P.* 292. *T. Raym.* 380. *Kel.* 37. 4 *Blac. Com.* 374.

When the disability is removed.

But a mere allowance of clergy without an actual burning in the hand, or a pardon of that punishment, does not restore the party to his credit. So resolved by all the judges in Lord *Warwick's case,* 13 *Howell's St. Tri.* 1015.

And now by stat. 19 G. 3. *c.* 74. § 3. If a person convicted of a clergyable offence be fined or whipped, instead of being burnt in the hand, his competency is also restored.

19 G. 3. c. 74.

And it seems agreed, that the king's pardon of treason or felony, after conviction or attainder, restores the party to his credit. 2 *Haw. c.* 46. § 22.

In the case of *Pendock* v. *Mackendar,* 2 *Wils.* 18. the question was whether a person convicted and whipped for *petit larceny* should be allowed to be a witness? And the court were clearly of opinion he should not; and laid it down as a rule, that *it is the crime that creates the infamy, and not the punishment for it.*

What is such infamy as disables a person from being a witness.

But by stat. 31 *G.* 3. *c.* 35., after reciting, that persons convicted of grand larceny, are by their punishment restored to their credit as witnesses, but that persons convicted of petit larceny remain incompetent; it is enacted, that no person shall be an incompetent witness by reason of a conviction for petit larceny.

31 G. 3. c. 35. Persons convicted of petty larceny to be competent witnesses.

The remaining objection to the admissibility of a witness, is the fact of his being *interested;* respecting which, it seems an uncontested rule in all cases, that it is a good exception against a witness, that he is either *to be a gainer or loser by the event of the cause,* whether such advantage be direct and immediate, or consequential only. 2 *Haw. c.* 46. § 24.

Witness interested.

On a prosecution for forgery, the party, by whom an instrument purports to be made, is not admitted to prove it forged, if he

would either be liable to be sued upon the instrument (supposing it genuine), or be thereby deprived of a legal claim against another. *R.* v. *Russell*, 1 *Leach*. 8. *Watts's case*, *Hard*. 331. 3 *Salk*. 172. *Rhodes's case*, 2 *Stra*. 728. *Caffy's case*, 2 *East's P. C.* 995.

But if the witness would not incur any loss, nor be liable to a suit whatever may be the result of the prosecution, his evidence ought to be received. Thus, on an indictment for forging a bank-note, in the name of a cashier of the bank of *England* "for the governor and company," the cashier, not being chargeable, may be a witness. *Newland's case*, 1 *Leach*, 311. 2 *East's P. C.* 1001. 1 *Phill. Ev.* 114.

Persons interested may in this, as in other cases, be made witnesses by a release; as the supposed obligor in a bond may be a witness when released by the obligee, (*Dr. Dodd's case*, 1 *Leach*, 155.) or the acceptor of a bill, when released by the holder. (*Taylor's case*, 1 *Leach*, 214.)

In *R.* v. *Fauntleroy*, *O. B. Oct. Sess.* 1824, a lady who had been a holder of stock in the public funds which had been sold out under a power of attorney, in which her name was forged, became a competent witness to prove the forgery, on proof that the stock had been replaced in her name, and on production of a release for the dividends thereon (from the time it was sold out) executed by her to the bank of England who were the prosecutors, and her legal claim against whom would have been destroyed had the instrument proved genuine. The prisoner was convicted and executed. *MS.* 2 *Bing*. 413.

In criminal cases. In many criminal cases, from the necessity of the thing, interested persons are allowed as witnesses. As where the owner prosecutes an indictment of felony for stolen goods, he is concerned in interest; for he will be entitled to restitution; and yet his evidence is admitted: so in removing an indictment by *certiorari* from the sessions to the K. B., though the prosecutor in that case, if the defendant be convicted, is entitled to his costs, yet he is allowed as a witness. And by *Parker* C. J. who, in the first case, but the owner, can prove the property of the goods? and in the second, if the giving of costs should take off the evidence of the prosecutor, that act of parliament which was designed to discountenance the removing of suits by *certiorari* would give the greatest encouragement to them that is possible. *Q.* v. *Muscot*, 10 *Mod*. 193. See 1 *Phill. Ev.* 111.

Informers. By the common law, informers, who are entitled under penal statutes to part of a penalty, are not competent witnesses. *R.* v. *Tilly*, 1 *Str*. 115. 1 *Phill. Ev.* 117. *and authorities there cited.*

But by the particular provisions or policy of several acts of parliament, they may be admitted. 1 *Phill. Ev.* 117.

Thus by stat. 2 *G.* 2. *c.* 24. § 8. against bribery at elections, the legislature, in giving an indemnity and discharge to any person offending against the act, who shall discover any other offender so that he may be committed, must also have intended, that he should be competent to give evidence at the trial; and, therefore, in an action for penalties he has been admitted. *Bush* v. *Ralling*, *Say*. 289. *Mead* v. *Robinson*, *Willes*, 425. *Heward* v. *Shipley*, 4 *East*, 182. 1 *Phill. Ev.* 118.

So in a prosecution on stat. 21 *G.* 3. *c.* 37. against exporting machinery the informer is competent. *R.* v. *Teasdale*, 3 *Esp.* 68. 1 *Phill. Ev.* 118. See Vol. V. *tit.* Servants.

Informers.

So on a prosecution for penalties under stat. 9 *Ann. c.* 14. § 5. the loser of money at cards may prove his loss. *R.* v. *Luckup*, *Will.* 425. n. (*c*). 1 *Phill. Ev.* 118.

And, on a prosecution under stat. 23 *G.* 2. *c.* 13. § 1. for seducing artificers to go out of the kingdom, the prosecutor is a competent witness, although entitled to a moiety of the penalty. *R.* v. *Johnson, Will.* 425. n. (*c*). 1 *Phill. Ev.* 118.

There is no express provision in either of the three acts of parliament last mentioned, for admitting the evidence of the party interested. In stat. 32 *G.* 3. *c.* 56. for preventing counterfeited certificates of servants' characters, there is a clause to that effect (§ 7.), and a similar provision is made by the act which regulates hackney coaches. Stat. 33 *G.* 3. *c.* 75. § 17. 1 *Phill. Ev.* 118.

In *R.* v. *Blackmore,* 1 *Esp.* 95., a witness was rejected on an information (under the statute) for concealing naval stores, as being the informer, and being entitled to a moiety of the penalty.

But in *R.* v. *Cole,* 1 *Esp.* 217. *Peake's Rep.* 217. Lord *Kenyon* C. J. held that a witness standing in a similar situation was not objectionable, because he had no absolute right to the penalty vested in him, as the court may order a corporal punishment, and are not obliged to inflict a pecuniary penalty.

Inhabitants.

Upon a question whether a certain manor were in the county of S., it was ruled that any person of the county, if he were not within the hundred where the manor was, might be a witness; for as to the county taxes, every hundred pays its proportion; but as hundreds, there are particular charges. *The county of Salop* v. *the county of Stafford,* 1 *Sid.* 192. *Peake's Ev.* 156, 157.

1 Ann. st. 1. c. 18.

By stat. 1 *Ann. st.* 1. *c.* 18. § 13. the inhabitants of a county may be witnesses upon trial of indictments for not repairing bridges, where the question is whether the county or a private person shall repair.

8 G. 2. c. 16.* Hundredors.

By stat. 8 *G.* 2. 16. § 15. Hundredors may be witnesses for the hundred, in actions against them upon the statute of *Hue and Cry.*

The party robbed, though clearly interested, is yet competent to prove the robbery, and the extent of his loss. *R.* v. *Carpenter,* 2 *Show.* 47. 1 *Phill. Ev.* 66. 118. 119.

In actions against churchwardens or overseers of a parish for the recovery of money mis-spent by them, inhabitants of the parish, who do not receive alms or any gift out of the parochial collection, are made competent witnesses by stat. 3 *W.* 3. *c.* 11. § 12.

Highway and turnpike acts.

In all cases relative to the execution of the highway act (13 *G.* 3. *c.* 78. § 69.) the surveyor of the parish or place is a competent witness, though part of his salary may arise from forfeitures and penalties imposed by the act. And on trials of offences against the same act (§ 77.) and also the general turnpike act (3 *G.* 4. *c.* 126. § 137.) the inhabitants of the parish or place are also competent.

4 G. 4. c. 95.

And by stat. 4 *G.* 4. *c.* 95. (to amend stat. 3 *G.* 4. *c.* 126.) § 84. no person shall be deemed incompetent to give evidence by reason of

4 G. 4. c. 95.

being a trustee, or commissioner, or a mortgagee or creditor of the tolls, or a farmer, lessee, or collector of such tolls, or a treasurer, or clerk, or surveyor, or other officer under such act.

But the inhabitants of a parish indicted for not repairing a highway are not competent to give evidence for the defendants. Vide per Lord *Ellenborough* C. J. *R.* v. *Inhab. of Wandsworth*, 1 *B. & A.* 66. *and* 1 *Phill. Ev.* 126.

R. v. *Inhab. of Wheaton-Aston*, *Stafford Sum. Ass.* 1797, *cor.* Ld. *Kenyon* C. J. Indictment against the defendants, inhabitants of a *township* for not repairing a highway. Defendants pleaded that one *Robinson* was bound *ratione tenuræ* to repair. This obligation was traversed and issue joined thereupon. On the part of the defendants, an inhabitant of the township was called as a witness, who was not an occupier of land therein, and therefore not rated to the poor, but Ld. *Kenyon* C. J. rejected him as being directly interested in the event of that suit, because if there should be a verdict against the defendants, the witness, as an inhabitant, would be liable to the payment of the fine; and also any inhabitant is bound to do statute duty. *From the MSS. of Mr. Serjeant Williams*, S. C. cited 2 *Saund.* 159. (*a*).

Inhabitants rateable.

Rated parishioners were always considered incompetent to give evidence for their parish in appeals against orders of removal, on the ground that they were directly and immediately interested in the event of the proceeding, by which the maintenance of the pauper and the costs of the appeal might be fixed upon their parish, and have the effect of increasing their proportion of the rates. *R.* v. *Prosser*, 4 *T. R.* 19. *R.* v. *South Lynn*, 5 *T. R.* 667. *R.* v. *Kirdford*, 2 *East*, 561.

And it was determined by the court of K. B. that on an appeal against an order of removal, if the appellants proved a settlement in a third parish, the rated inhabitants of that parish were not competent witnesses for the respondents to disprove it; as the confirmation of the order of removal would be conclusive evidence for the inhabitants of the third parish, that the settlement of the pauper was at that time in the appellant parish. *R.* v. *Terrington*, 15 *East*, 471.

54 G. 3. c. 170. **Inhabitants not incompetent witnesses in certain cases on behalf of or against their parishes.**

But these objections are removed by stat. 54 *G.* 3. *c.* 170. § 9. which enacts that "no inhabitant or person rated or liable to be rated to any rates or cesses of any district, parish, township or hamlet, or wholly or in part maintained or supported thereby, or executing or holding any office thereof or therein, shall, before any court or person or persons whatsoever, be deemed and taken to be by reason thereof an incompetent witness for or against such district, parish, township or hamlet, in any matter relating to such rates or cesses; or to the boundary between such district, parish, township or hamlet, and any adjoining district, parish, township or hamlet; or to any order of removal to or from such district, parish, township or hamlet; or the settlement of any pauper in such district, parish, township or hamlet; or touching any bastards chargeable or likely to become chargeable to such district, parish, township or hamlet; or the recovery of any sum or sums for the charges or maintenance of such bastards; or the election or appointment of any officer or officers, or the allowance of the accounts of any officer or officers of any such district,

parish, township or hamlet; any law, usage, statute or custom to the contrary in anywise notwithstanding."

Before the passing of this act it had been determined on an appeal against a poor rate, because certain persons were not rated; that a parishioner, who was liable to be rated, but not in fact rated, was a competent witness to prove the rateability of the persons omitted. *R.* v. *Prosser,* 4 *T. R.* 17. *Peake's Ev.* 157, 158.

So also an inhabitant, who was not rated, was a competent witness on an appeal between his own parish and another. *R.* v. *Little Lumley,* 6 *T. R.* 157. Though left out of the rate for the mere purpose of making him a witness. *R.* v. *Inhab. of Kirdford,* 2 *East,* 559. But where his son was rated for the property held by him he was deemed incompetent. *R.* v. *Killerby,* 10 *East,* 292. *Peake's Ev.* 158.

Meredith v. *Gilpin and others, M.* 59 *G.* 3. 6 *Price,* 146. 1 *Phill. Ev.* 120. In an action of trespass against the overseers of a township, where the principal point was, whether the lands in question were vested in the overseers under a local act of parliament, the court of exchequer determined that a rated inhabitant of the township was not an incompetent witness on the part of the defendants, although the land in question, if vested in the defendants, would be vested in trust for the township and in aid of the poor rates.

The owner of an estate occupied by his lessee has a permanent interest in it, which disqualifies him from being a witness to disburden such estate from payment of a rate.

An issue was directed to try whether the inhabitants of the chapelry of *Milne Row,* at their own exclusive costs and charges, had immemorially repaired the chapel; the affirmative of that issue lay on the plaintiff, and his case having been closed, the defendants called a witness who was an owner of a tenement in the chapelry, which tenement was then in the hands of a tenant, who was rated for the same and had paid the rates, having agreed to pay his rent without any deduction, under a lease of which many years of the term were then unexpired. The owner's name did not appear on the rate, and he resided in a different county. This witness was objected to on the ground of interest, and rejected by *Wood* B. at the trial at *Lancaster Sum. Ass.* 1817. A new trial was moved for on the authority of *R.* v. *Kirdford,* 2 *East,* 559., by which the principle is established that to render a witness incompetent, his interest must be actually existing at the time, and not one that is expected. But the court held that the witness was properly rejected, having an interest in the event of the suit. The rate in question was a perpetual burden on the estate, and he as owner had an immediate interest in removing from that property a burden which went permanently to diminish the value. It is not necessary that the witness should be actually rated in order to render him incompetent; for the question is, whether he is a person coming to give evidence on a matter in which he is interested? and if he is, the law deems him incompetent. *Abbott* J. observed, that the case cited was that of a mere occupier, not having any permanent interest. *Rhodes* v. *Ainsworth,* 1 *B. & A.* 87.

Inhabitants rated.

Upon an appeal against an order of removal, the respondents called as a witness a rated inhabitant of the appellant parish, who refused to give evidence: the sessions thought he was not compellable to do so. The court of K. B. held that the inhabitants of

a parish, paying rates, were the parties grieved and interested in the event of the proceedings; that it was a long established rule of evidence that a party to a suit cannot be called upon against his will, by the opposite party, to give evidence. Therefore the sessions were right in their determination. *R.* v. *Woburn*, 10 *East*, 395.

Their declarations.

Accordingly, in *R.* v. *Hardwicke*, 11 *East*, 578., it was decided that the *declarations* of a rated inhabitant of either parish, concerning the facts in issue are admissible in evidence, not only against himself, but also against the other rated inhabitants of his parish. And it is by no means necessary, in order to make such declarations evidence, that he should first be called as a witness and refuse to be examined. *R.* v. *Whitley Lower*, *T.* 53 *G.* 3. 1 *M.* & *S.* 636.

All the rated inhabitants are considered as parties to the appeal, and therefore their declarations are evidence; if what they have said is mere idle conversation it will have but little weight. *Per* Ld. *Ellenborough* C. J. *S. C.* and *MS.*

In *R.* v. *Hardwicke* (above mentioned) *Bayley* J. said, "I do not think that in ordinary cases magistrates should give any weight to mere declarations of this kind; though there may be occasions when the declaration of such a party would have great weight, as if a person having gained a settlement by hiring and service were to become a lunatic, the master refuses to be examined, you may in that case give evidence of his declaration." *MS.*

27 G.3. c.29.

By stat. 27 *G.* 3. *c.* 29. Where pecuniary penalties, or parts thereof, are given to the *poor*, the inhabitant of any place may be a competent witness to prove an offence, though the place may be benefited by the conviction of the offender, provided the penalty does not exceed 20*l.*

Party in a cause.

In *Norden* v. *Williamson* (C. P.), 1 *Taunt.* 378., it was decided, that if the defendant and plaintiff be willing, the defendant may have the plaintiff as a witness.

Commoner.

One *commoner* may be a witness for another *claiming common*, because in effect it charges himself; but if the prescription be, that all the inhabitants of such a place ought to have common there, one of the inhnbitants cannot be a witness to prove that another of the said inhabitants ought to have common there, because he would, in effect, swear to give himself right of common there. 1 *Ld. Raym.* 731. *Anscomb* v. *Shore*, 1 *Taunt.* 261. 1 *Phill. Ev.* 54.

Trustee.

If a trustee takes a beneficial interest, he is incompetent, but without such an interest trustees and executors are competent witnesses. 1 *Phill. Ev.* 64, 65., *and authorities there cited.*

Heir at law.

An *heir at law* may be a witness concerning the title to the land; but the remainder-man cannot, for he hath a present interest; but the heirship is a mere contingency. *Smith* v. *Blackham*, 1 *Salk.* 283.

Steward of a manor.

It is no objection to a *steward* of a manor, that he has a fee on admission; he is a witness notwithstanding. 3 *Keb.* 90.

Member of a corporation.

In questions as to the rights or immunities of a *corporation*, the evidence of individuals who are not privately interested, though members of the city, may be received. But where corporators, as such, have private interest, as to be free of toll, rights of common,

&c., these being really and substantially interested in the event of the cause, are no witnesses. 1 *Peake's Ev.* 145, 146, 156., *and authorities there cited.*

Wager.

Lord *Raymond* in *R.* v. *Fox,* 1 *Str.* 652,. admitted the prosecutor to be a witness, on an indictment for an assault, although he had laid a wager that he should convict the defendant; and the reason seems to be, not because the witness had made the wager at a time when public justice became interested in his testimony, but because it would be against public policy to allow a witness, by any such gratuitous act, to exclude himself from giving evidence; and there seems to be another reason for admitting the witness, for the wager would now probably be considered absolutely void, on a principle of public policy, as tending to produce an improper bias on the mind of the witness, and therefore, as directly prejudicial to the administration of justice. 1 *Phill. Ev.* 130.

There are several dicta in favour of the position that a witness is not competent if he believes himself interested, whether he is or is not interested, in strictness in law. By *Pratt* C. J. in *Fotheringham* v. *Greenwood,* 1 *Str.* 129. See also 1 *H. Blac.* 307. *S. P.* But these dicta were not the ground of the determination in the cases then before the court, nor was it necessary to determine the point; and further, the general rule of law on the subject of interest was not at that time so clearly settled as it has since been by many later authorities. 1 *Phill. Ev.* 51, 52.

Witness believing himself to be interested

In a late case, before the high court of admiralty, an objection was made to the evidence of a witness, who had acknowledged in his answer " that he could not say he was not interested, inasmuch as he conceived he would be entitled to share, if his vessel should be pronounced a joint captor, though he had signed a release;" on the other side it was contended, that as he was clearly not interested, the effect of his impression was no more an objection in this case than in those in which the expectation depended only on the bounty of the parties. But Sir *William Scott* rejected the evidence; observing "he had always understood the distinction to be, that, if the witness says only that *he expects* to share from the bounty of the captors, he is not disqualified or rendered incompetent, whatever may be the deduction of credit to which he is exposed. But if he *thinks himself entitled in law,* he acts under an impression of interest, which renders him incompetent, however erroneous that opinion may be. *Case of the Amitié Villeneuve,* 5 *Rob. Adm. Rep.* 344. n. 1 *Phill. Ev.* 52.

Honorary obligation.

In *Pederson* v. *Stoffles,* 1 *Campb.* 145., where, in an examination upon the *voir dire,* the defendant's witness said, *he considered himself bound in honour to indemnify the defendant's bail,* and this was objected against his being sworn as a witness, Sir *James Mansfield* C. J. ruled that a mere obligation in honour was no objection to the competency of a witness. 1 *Phill. Ev.* 51.

Witness's hope or expectation.

It is no objection that a witness *hopes* or expects a benefit. *Gilb. Ev.* 124.

Persons interested in either event of a cause

It is only necessary in a work of this nature to observe, that as an exception to the general rule, that persons immediately interested in the event of the cause cannot be witnesses for that party whose claim, if established, will advance their own interest, there is a class of cases determining that where a person is equally in-

terested, either in the event of a verdict for the plaintiff or defendant, he is a good witness. As, for example, where one is intrusted by *A.* to pay money to *B.*, and does not pay it accordingly, and then *B.* brings an action against *A.* for the amount: the agent is a good witness to prove no payment; inasmuch as he acknowledges the receipt of the money from *A.*, and thereby renders himself liable to *A.*

Witnesses of necessity.

Persons who become interested *in the common course of business*, and who alone can possibly have knowledge of a fact, may be called as witnesses to prove it; as persons who have been agents employed to pay money may prove such payment. So, an agent may prove the terms of a contract, though he be to derive a profit from it; and this upon the ground of necessity. If such evidence were not admitted, the facts would be incapable of proof. *Bull. N. P.* 289. *Dixon* v. *Cooper*, 3 *Wils.* 40.

Interest acquired subsequently.

Where a person made himself a party in interest, after a plaintiff or defendant has an interest in his testimony, he may not by this deprive the plaintiff or defendant of the benefit of his testimony. Cited by Lord *Kenyon* C. J. in *Bent* v. *Baker and another*, 3 *T. R.* 27.

Upon the whole, with respect to *interest*, a man who is interested in the event of a suit, is objectionable only when he comes to prove a fact consistent with his interest; for if the evidence he is to give be contrary to his interest, he is the best possible witness that can be called, and no objection can be made to him by the party in the cause. *Peake's Ev.* 155.

And again, the judges have, in a variety of cases, resolved that these questions of interest shall, as far as possible, go to the *credit* rather than the *competency* of the witness. *Id.* 141.

Some persons also are privileged, by reason of their peculiar relationship to the party in the cause, from being compelled to give evidence.

Attorneys.

Thus, an attorney ought not to be examined against his client, because he is obliged to keep his secrets; but of his own knowledge before retainer, that is, before he was addressed in his professional character, he may be examined as a witness, if served with a subpœna. *Wood's Inst. b.* 4. *c.* 4., and *Cutts* v. *Pickering*, *Ventr.* 197.

The privilege of confidential communications is not confined to such as are made in relation to a cause. Where, therefore, an attorney who was consulted upon an assignment alleged to be fraudulent, but not employed in drawing it, was called, the court of C. P. held that his evidence was properly rejected. *Cromack* v. *Heathcote*, 2 *Brod. & Bing.* 4. *Contra*, *MS. case*, *Wadsworth* v. *Hamshaw and another*, *cor. Abbott* C. J. 1st *March*, 1819. 1 *Phill. Ev.* 134.

But this privilege only extends to prevent the disclosure of facts communicated confidentially to the witness in the character of attorney; and therefore it was decided in *Spenceley*, q. t. v. *Schulenburgh*, 7 *East*, 357., that an attorney may be examined as to the contents of a written notice which he had received in the course of the cause, calling upon him to produce papers in the hands of his clients. For "the privilege is restricted to communications, whether oral or written, from the client to his attorney, and cannot extend to adverse proceedings communicated to him as attor-

ney in the cause from the opposite party, in the disclosure of which there could be no breach of confidence." *Per* Ld. *Ellenborough* C. J. S. C.

This is the privilege of the client, and not of the attorney. But it is confined to the three cases of counsel, solicitors, and attorneys, when acting in their respective characters, 4 *T. R.* 753.

Agent. Steward. It does not extend to the case of an agent or steward. *Ib.* and 2 *Atk.* 524.

Conveyancer. Medical persons. Nor to the case of a conveyancer. 2 *Atk.* 525. Nor, of course, to the case of *medical persons*. 4 *T. R.* 760.

There are cases, said Mr. J. *Buller*, in *Wilson* v. *Rastall*, 4 *T. R.* 760., to which it is much to be lamented that the law of privilege is not extended; those in which medical persons are obliged to disclose the information they acquire, by attending in those professional characters. This point was very much considered in the Duchess of *Kingston's* case, before the house of lords, where Sir *Cæsar Hawkins*, who had attended the duchess as a medical person, was compelled to disclose what had been committed to him in confidence. 20 *Howell's St. Tr.* 572, 573. See also 1 *Phill. Ev.* 132, 135, 136.

Agency. In the course of the proceedings on the bill of pains and penalties against the late queen, in the house of lords, a question was proposed to the judges as to the competency of proving, on the trial of a criminal prosecution, certain acts supposed to have been done by the agent of the prosecutor. On that occasion the judges determined that a defendant's counsel would not be allowed to prove in the defence that *A. B.*, who had been employed as agent to procure evidence in support of the indictment, but who had not been examined as a witness, offered a bribe to some third person (who likewise had not been examined) to induce him to give evidence touching the subject-matter of the prosecution; and similar proof as to the conduct of the defendant's agent would be equally inadmissible, if offered on the part of the prosecutor. Here it is to be observed, the act of the agent which it was proposed to prove, is supposed to have been addressed to a person not called as a witness for the prosecution, and to be of a nature entirely unconnected with any particular matter deposed to by other witnesses, so that those witnesses would not be in any manner affected by the proposed proof, excepting by way of inference and conclusion. These circumstances were particularly noticed by Lord C. J. *Abbott*, in delivering the opinion of the judges. His lordship, at the conclusion of his speech, after observing on the abstruse nature of the question, added, "Notwithstanding the opinion thus delivered, he was by no means prepared to say, that in no case, and under no circumstances appearing at a trial, it might not be fit and proper for a judge to allow proof of such a nature to be submitted to the consideration of a jury; and the inclination of every judge would be to admit rather than to exclude the offered proof." *S. C.* 2 *Brod. & Bing.* 304. 309. 1 *Phill. Ev.* 102. 3 *Hans. Parl. Deb.* (*N. S.*) 810, 811.

Of examining Witnesses, and of the Mode of enquiring into their Credibility.

The several objections above enumerated may be raised, either by an examination of a witness upon the *voir dire*, (of which sufficient has been said before,) or by an examination after the witness has been sworn.

Witnesses refreshing their memories.

Witnesses are allowed to refresh their memories by looking at memoranda made under certain circumstances.

In *Doe* d. *Church* v. *Perkins*, 3 *T. R.* 749., it was adjudged, that a witness may refresh his memory by *any* book or paper, provided he can afterwards swear to the fact from his own recollection; but if he cannot swear to the fact from recollection, any farther than as finding it entered in a book or paper, then the *original* book or paper must be produced; for he shall not be allowed to give evidence from a copy or extract from it.

A witness may refresh his memory by looking at memoranda or entries which he did not make himself, but which he regularly examined from time to time while the entries were fresh in his recollection, and which he always found accurate. *Burrough* v. *Martin*, 2 *Campb.* 112.

Witness's power to refuse answering questions.

It appears to have been considered formerly that a witness was not compellable to answer any question which might subject him to a civil action, or tend to charge himself with a debt.

Pending the impeachment against Lord *Melville* in 1805 and 1806, this subject underwent much discussion in both houses of parliament; and the following questions were put by the house of lords to the judges: — (see *Lords' Journals, Vol.* XLV. *p.* 420.)

" Whether, according to law, a witness can be required to answer a question, the answering of which has no tendency to criminate or accuse himself, but the answering of which may establish, or tend to establish, that he owes a debt recoverable by civil suit?

" Whether, according to law, a witness can be required to answer a question, the answering of which would not expose him to a criminal prosecution, but might expose him to a civil suit at the instance of H. M., for the recovery of profits derived by him from the use or application of public money, contrary to law?"

The judges delivered their opinion *seriatim*, but there being much difference of opinion amongst them, it was thought necessary to clear up the doubts by passing the following declaratory act. (See *Hansard's Parliamentary Debates, Vol.*VI. *p.* 226, 234, &c.)

46 G. 3. c. 37.

By stat. 46 *G.* 3. *c.* 27. intituled " An act to declare the law with respect to witnesses refusing to answer;" reciting, " Whereas doubts have arisen whether a witness can by law refuse to answer a question relevant to the matter in issue, the answering of which has no tendency to accuse himself or to expose him to any penalty or forfeiture, but the answering of which may establish or tend to establish that he owes a debt, or is otherwise subject to a civil suit at the instance of H. M., or of some other person or persons;" it is therefore declared and enacted, " that a witness cannot by law refuse to answer a question relevant to the matter in issue, the answering of which has no tendency to accuse him or to expose him to penalty or forfeiture of any nature whatever, by reason

Declaring the law respecting witnesses refusing to answer questions.

only, or on the sole ground, that the answering of such question may establish or tend to establish that he owes a debt, or is otherwise subject to a civil suit, either at the instance of H.M., or of any other person or persons." See 1 *Phill. Ev.* 262, 263.

46 G. 3. c. 27.

But the rights which the parties to a suit have to refuse answering any question, is not in any degree affected by this statute; and, therefore, on a question of settlement, a rated parishioner is not compellable by the adverse parish to give evidence, as he is directly interested as party to the appeal, and does not come within the words or meaning of the act. *R.* v. *Inhab. of Woburn*, 10 *East*, 395.

On an information against several persons, for executing an office of trust without taking the oaths, the court refused a motion for leave to inspect such books kept by the defendants, in which they had entered their elections, receipts, and disbursements, as it would have compelled them to give evidence against themselves in a criminal prosecution. *R.* v. *Mead*, 2 Ld. *Raym.* 927. *R.* v. *Worsenham*, 1 Ld. *Raym.* 705. *R.* v. *Cornelius*, 2 *Str.* 1210.; and a similar motion was refused, on an information against two overseers for making a rate without the concurrence of the churchwardens. *R.* v. *Lee*, *cited* 1 *Wils.* 240. 1 *Phill. Ev.* 415.

Impeaching a witness's character.

It is a general rule that a witness shall not be asked any question, the answering to which might oblige him to accuse himself of a crime; and that his credit is to be impeached only by general accounts of his character and reputation, and not by proofs of particular crimes, whereof he never was convicted. 2 *Haw.* *c.* 46. § 20. and see *Sharp* v. *Scoging*, *Holt's R.* 541.

By disgracing questions.

But a witness may be asked whether he has not stood in the pillory for perjury. (*a*) *R.* v. *Edwards*, 4 *T. R.* 440.

A man shall not be permitted to swear that he was suborned and perjured. *Oates's case*, 10 *Howell's St. Tr.* 1185, 1186.

And Ld. *Coke* says, a witness alleging his own infamy or turpitude, is not to be heard. 4 *Inst.* 279.

A witness can not be asked a question which tends to disgrace him.

In *R.* v. *Lewis and others*, indicted for an assault, the prosecutor, who was a common informer, and a man of suspicious character, was asked, in the course of his cross-examination, if he had not been in the house of correction in *Sussex*; Ld. *Ellenborough* C. J. interposed, and said, that that question should not be asked: that it had been formerly settled by the judges among whom were C. J. *Treby*, and Mr. J. *Powell*, both very great lawyers, in *R.* v. *Peter Cook*, 13 *Howell's St. Tr.* 311. 334. 355., that a witness was not bound to answer any question, the object of which was to degrade, or render him infamous. His lordship said, that he thought the rule ought to be adhered to, as it would be an injury to the administration of justice, if persons, who come to do their duty to the public, might be subjected to improper investigation. The witness was not permitted to be examined. *R.* v. *Lewis and others*, *M.* 43 *G.* 3. 4 *Esp.* 225. 1 *Phill. Ev.* 267, 268.

(*a*) In the case of *Frost* v. *Holloway*, sitt. *K. B.* after *H. T.*, 1818, Mr. *Scarlett*, in cross-examining a witness, asked him, whether he had not been tried for theft at *Reading*. The witness refused to answer, and appealed to Lord *Ellenborough*, whether he was bound to answer such a question. Lord *Ellenborough* said, "If you do not answer the question, I will commit you;" adding, "you shall not be compelled to say, whether you were guilty or not." 1 *Phill. Ev.* 269. *notis.* See also Lord *Cochrane's Trial by Gurney*, p. 419.

How far a witness may be examined as to matters tending to disgrace or degrade him.

In *Macbride* v. *Macbride*, 4 *Esp*. 242., which was an action of assumpsit to receive several items of demand. To prove part of which, a woman was called as a witness, who, as was suggested, lived in a state of concubinage with the plaintiff; *Best* Serjt. was proceeding to examine as to that point; Ld. *Alvanley* C. J. interposed, and said, that as evidence to the effect proposed to be gone into had been objected to in another court, he would have it understood how far he would allow such investigation to go. He thought questions as to general conduct might be asked; but not such as went immediately to degrade the witness; he would therefore allow it to be asked, whether she was married, as she might be married to the plaintiff. But having said she was not, he would not allow it to be asked, whether she slept with him. His lordship then added, I do not go so far as others may: I will not say that a witness shall not be asked to what may tend to disparage him; that would prevent an investigation into the character of the witness, which it may be often of importance to ascertain. I think those questions only should not be asked which have a direct and immediate effect to disgrace or disparage the witness.

On the trial of *O'Coigley* and *O'Conner*, 26 *Howell's St. Tr.* 1353., a question was asked in cross-examination, which threw an imputation on the witness, and the counsel was not allowed to repeat the question, or follow it up by another; but here the witness had first appealed to the court for protection. *Sed vide* the cross-examination of *Castle* on *Watson*'s trial, K. B. *June*, 1817. Vol. I. p. 500. *et seq.* published by *Gurney*.

On an indictment for a rape, the woman is not obliged to answer whether on some former occasion she had not a criminal connexion with other men, or with particular individuals; nor is evidence of such criminal intercourse admissible. *Hodgson's case*, *York. Sum. Ass.* 1811, *cor. Wood* B., and afterwards before all the judges on case reserved. *MS. C. C. R.* 1 *Phill. Ev.* 165, 262.

It is not competent to counsel on cross-examination to question the witness concerning a fact wholly irrelevant to the matter in issue,* if answered affirmatively, for the purpose of discrediting him if he answered in the negative, by calling other witnesses to disprove what he said. *Spencely* q. t. v. *De Willott*, 7 *East*, 108.

Upon cross-examination to try the credit of a witness, only general questions can be put, and he cannot be asked as to any collateral and independent fact merely with a view to contradict him afterwards by calling another witness. *S. C.*

If the witness answers such an irrelevant question before it is disallowed or withdrawn, his answer is conclusive; witnesses cannot be called to contradict him. *Harris* v. *Tippet*, *Gloucester Lent Ass.* 1811, *cor. Lawrence* J., 2 *Campb.* 638. *R.* v. *Watson*, *K. B. T.* 1817. 2 *Stark. N. P.* 149.

It would be irrelevant to ask a witness in cross-examination whether he had not attempted to dissuade another witness from attending the trial. *Harris* v. *Tippet*, 2 *Campb.* 637.

The rule seems particularly illustrated by the following case, which occurred at *Monmouth Lent Ass.* 1811. One *Yewin* was indicted for stealing wheat. The principal evidence against him was a boy of the name of *Thomas*, his apprentice. *Lawrence* J. allowed the prisoner's counsel to ask *Thomas* in cross-examina-

tion, whether he had not been charged with robbing his master, and whether he had not afterwards said, he would be revenged of him, and would soon fix him in *Monmouth* gaol? He denied both. The prisoner's counsel then proposed to prove, that he had been charged with robbing his master, and had spoken the words imputed to him. *Lawrence* J. ruled, that his answer must be taken as to the former; but that as the *words* were material to the guilt or innocence of the prisoner, evidence might be adduced, that they were spoken by the witness. 2 *Campb.* 638.

A witness may object to answer a question which he thinks will tend to his crimination, though the answer would not lead to an immediate conclusion of guilt. *Cates* v. *Hardacre,* 3 *Taunt.* 424.

By showing he has said or done something contrary to his evidence.

Where a witness swears to a particular fact, a letter written by him, contradicting in effect his testimony upon that point, may be given in evidence, to impeach his credit, the letter being first regularly proved. The witness stated that a certain school, of which he was usher, had been duly conducted as to morals. A letter was then offered in evidence on the other side, and received as such, formerly written by the witness, whilst usher, to a boy then at the school, containing much immoral matter. *De Sailly* v. *Morgan,* 2 *Esp.* 692. See 1 *Phill. Ev.* 278.

In the proceedings on the bill of pains and penalties against the late queen, the judges, in answer to a question, put to them by the house of lords, decided that, upon cross-examination, counsel cannot be allowed to represent, in the statement of a question, the contents of a letter, and to ask the witness whether the witness wrote a letter to any person with such contents, or contents to the like effect, unless the letter is first shown to the witness, and the witness is asked whether he wrote such letter, and admits that he did write it. 2 *Brod. & Bing.* 286. 1 *Phill. Ev.* 281.

A witness may be asked, upon cross-examination, upon showing such witness only a part or one or more lines of a letter, and not the whole of it, whether he wrote such part or such one or more lines. But if the witness should not admit that he wrote such part or such one or more lines, the witness cannot be examined as to the effect of the contents of the letter, unless it is shown to him, and he admits that he wrote it. *S. C.* 2 *Brod. & Bing.* 286. 1 *Phill. Ev.* 282.

When a witness is cross-examined, and upon the production of a letter to the witness under cross-examination the witness admits he wrote that letter, the witness cannot be examined whether he did or did not, in such letter, make statements such as the counsel shall, by questions addressed to the witness, enquire are or are not made therein; but the letter itself must be read as the evidence to manifest that such statements are or are not contained therein. It is a rule of evidence, as old as any part of the common law of *England,* that the contents of a written instrument, if in existence, are to be proved by that instrument itself, and not by parol evidence. In the regular course of proceeding the letter ought to be read after the counsel cross-examining shall have opened his case; but upon the request of such counsel, stating that it is expedient for the purpose of his more effectually, in the course of his cross-examination, propounding farther questions necessary for the interest of his client, such letter may be permitted to be read, subject to all the consequences of having it considered as part of

his evidence. *S. C.* 2 *Brod. & Bing.* 288. 290. *Et vide* 1 *Phill. Ev.* 282.

If, on cross-examination, counsel enquire of a witness whether he has made representations of any particular nature, stating the nature of those representations, they must, in their enquiries, ask the witness first whether he made the representations by parol or in writing. *S. C.* 2 *Brod. & Bing.* 292. See also 1 *Phill. Ev.* 284, 285. n.*.

A witness may be examined as to what he has formerly sworn in an affidavit: but the affidavit, or an office copy of it, must be first read in court. *Sainthill* v. *Bound,* 3 *Esp.* 74.

Leading questions.

Leading questions, that is, such as instruct a witness how to answer on material points, are not allowed on the examination in chief; for, to direct witnesses in their evidence would only serve to strengthen that bias, which they are generally too much disposed to feel, in favour of the party that calls them. Questions which are intended merely as introductory, and which, whether answered in the affirmative or negative, would not be conclusive on any of the points in the cause, are not liable to the objection of leading. If it were not allowed to approach the points in issue by such questions, the examination of witnesses would run to an immoderate length. For example, if two defendants are charged as partners, a witness may be properly asked, whether the one defendant has interfered in the business of the other. This is not a leading question; for though he may have interfered, it will not follow that he has by this alone made himself liable as partner. Or if a witness, called to prove the partnership of the plaintiffs, is not able at the moment to specify the several names of the partners, a number of names, containing those of the partners among others, may be suggested to the witness, for the assistance of his memory. *Acerro and others* v. *Petroni,* 1 *Stark. N. P.* 100. 1 *Phill. Ev.* 255.

In a criminal prosecution it is proper, and the common practice is, to direct the attention of the witness to the person of the prisoner, and ask him whether that is the man of whom he has been speaking. *Watson's case,* 2 *Stark. N. P.* 128.

By a leading question on cross-examination.

A witness swore to a particular circumstance as part of the contents of a letter, which he also swore was lost. Another witness, who had heard the letter read, was permitted to be examined to the particular circumstance, by a leading question, for the purpose of denying its forming part of those contents, provided the witness's memory had been first exhausted by general questions as to the contents of the letter. *Courteen* v. *Touse,* 1 *Campb.* 43.

Extrinsic evidence to the character of witnesses.

In the case of *Mawson* v. *Hartsink and others,* 4 *Esp.* 102., the defendants intending to impeach the credit of a witness for the plaintiff, by showing such witness to be of an infamous character, were prohibited from asking, whether from what their own witness had seen pass at *Bow-street,* at which place the plaintiff's witness had been before the magistrates there, he would believe him on his oath. They were permitted to put this question, "Have you the means of knowing what the general character of this witness was? and from such general character, would you believe him on his oath?" For then it would be open to the plaintiff to ask as the means of knowing the witness's character.

Where the character of a witness has not been attacked, no evidence can be admitted in support of it. *The Bishop of Durham* v. *Blackett*, 1 *Campb.* 207.

But evidence of the conduct of deceased witnesses when it has been attacked may be received, to attach credit to their testimony, or to destroy its effect. *Wright ex* d. *Clymer* v. *Littler*, cited by Ld. *Ellenborough* C. J. 1 *Campb.* 210. *Vide etiam*, 6 *East*, 195.

The prosecutrix of an indictment for an assault with intent to commit a rape having been cross-examined as to crimes committed by her several years before the alleged offence, evidence may be adduced to show that her character has since been good. *R.* v. *Clarke, M.* 58 *G.* 3. *cor. Holroyd* J., 2 *Stark. N. P.* 241.

Impeaching the credit of subscribing witnesses.

It often happens that the character of the subscribing witnesses to deeds, and other written instruments, is the subject of enquiry; and upon this point the following cases have occurred.

If the subscribing witnesses to a will be dead, evidence given of what was said by one of them, being then in bed of the illness of which he died, thereby impeaching the validity of the will, inasmuch as he declared it was a forgery, was admitted, and afterwards decided to have been rightly admitted. Such evidence being given, not to prove the forgery, but to impeach the credit of the subscribing witness. *Wright* d. *Clymer* v. *Littler*, 3 *Burr.* 1244.

And evidence of the character of the subscribing witnesses may be admitted, if an imputation be cast upon the will. *Doe dem. Stephenson* v. *Walker*, 3 *Esp.* 284.

And upon the authority of the preceding case, evidence was admitted that the subscribing witness to a bond had in his last moments begged pardon of heaven for having been concerned in forging it. *Per* Ld. *Ellenborough* C. J. in *Aveson* v. Ld. *Kinnaird*, 6 *East*, 195.

These decisions were upon the principle that, if the subscribing witness could have been produced upon the trial, to prove his handwriting, as he might have been cross-examined, so a party may prove his declaration of the fact in contradiction to the presumption of a due execution of the bond from the proof of his handwriting as a subscribing witness. *S. C.*

Witness varying his testimony at different trials.

It has been agreed that the evidence given by a witness at one trial cannot, in the ordinary course of justice, be made use of against a defendant on the death of such witness at another trial. 2 *Haw. c.* 46. § 12.

But it hath been admitted that, in order to show a variance in the evidence, a deposition taken by a witness before a justice of the peace may at the prisoner's desire be read at the trial, in order to take off the credit of the witness, by showing a variance between such depositions and the evidence given in court. And for the same reason it seems agreed, that where a witness at one trial varies from his own evidence at another trial, in relation to the same matter, such variance may also be given in evidence to invalidate his testimony at the second trial. 2 *Haw. c.* 46. § 9.

But nothing shall be admitted as evidence of what was done at another trial, till the record of that trial be produced.

When a witness in support of a prosecution has been examined in chief, and has not been asked in cross-examination as to any

declarations made by him, or acts done by him, to procure persons corruptly to give evidence in support of the prosecution, it is not competent to the party accused to examine witnesses in his defence to prove such declarations or acts, without first calling back such witness examined in chief, to be examined or cross-examined as to the fact, whether he ever made such declarations or did such acts. See the opinion of the judges on the several questions *proposed to them in the course of the proceedings against her late majesty*. *2 Brod. & Bing.* 311 3 *Hans Parl. Deb.* (*N. S.*) 885.

If a witness is called on the part of the plaintiff or prosecutor, and gives evidence against the defendant or accused, and if, after the cross-examination of such witness, the defendant's or accused's counsel discover that the witness so examined has corrupted or endeavoured to corrupt another person to give false testimony in such cause, the counsel for the defendant or accused is not permitted to give evidence of such corrupt act of such witness without calling back such witness. S. C. 2. *Brod. & Bing.* 311.

"The usual practice,' said Lord C. J. *Abbott*, in delivering the opinion of the judges, 'is this if it be intended to bring the credit of a witness into question, by proof of any thing that he may have said or declared touching the cause, the witness is first asked upon cross examination whether or no he has said or declared that which is intended to be proved.' S. C. 2 *Brod. & Bing.* 313. See also 3 *Hans. Parl. Deb.* (*N. S.*) 887.

Upon the question whether a witness being asked in cross-examination, if in conversation with *C. D.* he had not informed him "that he was to be one of the witnesses against the defendant," and being re examined he stated what induced him to mention to *C D.* what he had so told him, and the counsel further proposed to ask as to the whole conversation between him and *C' D* so far only as related to his being one of the witnesses; the judges, eight against one (*Best* J. *diss*), were of opinion that the witness having fully and unambiguously explained his motive for so stating, the re-examination could not proceed to the extent sought, and a distinction was made between a conversation with a witness and a party to the suit or prosecution, where the declarations of the latter would be evidence against him, and a conversation with a third party would not. In the latter case, as the conversation of the witness could only become evidence, as it might affect his character and credit with respect to antecedent declarations, or the motives under which he made them, when once every thing which constituted the motive and inducement, and which might show the party's meaning it the declarations were laid before the court, all beyond is irrelevant and incompetent. *S. C.* 2 *Brod. & Bing.* 294, 298.

If a witness examined in chief on the part of the plaintiff, being asked whether he remembers a quarrel taking place between *A* and *B.* answers that he has heard of a quarrel between them, but does not know the cause of it, *and such witness is not asked, upon his cross-examination*, whether he has or has not made a declaration stated in the question touching the cause of a quarrel, the counsel for the defendant cannot, in order to prove such witness's

knowledge of the cause of the quarrel, afterwards examine a witness to prove that the other witness has made such a declaration to him touching the cause of such quarrel. *S. C.* 2 *Brod.* & *Bing.* 299.

If a witness examined in chief on the part of the plaintiff being asked whether he remembers a quarrel taking place between *A.* and *B.* answers that he does not remember it, and such witness is not asked on his cross-examination whether he has or has not made a declaration stated in the question respecting such quarrel, the counsel for the defendant cannot, in order to prove that such witness must remember the quarrel, afterwards examine a witness to prove that the other witness has made such a declaration. *S. C.* 2 *Brod.* & *Bing.* 299.

Liability to cross-examination.

When a witness has been once sworn to give evidence, the other party may cross-examine him, though he gave no evidence for the party that called him. *Phillips* v. *Eamer et al.*, 1 *Esp.* 356.

A witness having been called into the box, and sworn in the course of a prosecution for a misdemeanor, produces a document, but is not examined; the defendant is entitled to cross-examine.

R. v. *Brooke*, *Sitt. at West. after H. T.* 59 *G.* 3. 2 *Stark. N. P.* 472. Indictment for perjury. The attorney for the prosecution was called and sworn, and produced a copy of a declaration in an action brought by the defendant against the prosecutor, but he was not asked any question on the part of the prosecution. *Scarlett*, for the defendant, insisted upon his right to cross-examine him for the plaintiff; and this being objected to on the part of the prosecution, *Abbott* C. J. was of opinion, that in strictness the defendant was entitled to cross-examine, and he was cross-examined accordingly. The defendant was afterwards acquitted upon the merits of his case.

A party contradicting his own witness by others.

If a witness is called on the part of the plaintiff, who swears what is palpably false, it would be extremely hard, if the plaintiff's case should be for that reason sacrificed. The party is not to set up so much of a witness's testimony as makes for him, and to reject or disprove such part as is of a contrary tendency. But if a witness is called, and gives evidence against the party calling him, I think he may be contradicted by other witnesses on the same side, and that in this manner his evidence may be entirely repudiated. *Per* Lord *Ellenborough* C. J. in *Alexander* v. *Gibson*, 2 *Campb.* 556.

But a party shall never be permitted to discredit, by general evidence, his own witness; for that would be to enable him to destroy the witness if he spoke against him, and to make him a good witness if he spoke for him with the means of destroying his credit if he spoke against him. *Bull. N. P.* 297.

The meaning of the rule is, that a party cannot prove his own witness to be of such a general bad character as would make him unworthy of credit. If he knew the infamy of his character, he was practising a fraud upon the court in producing him as a witness. But if a witness unexpectedly give evidence against the party that called him, another witness may be called to prove those facts otherwise; as where the question was whether the defendant's servant, who had been employed to sell a horse, had warranted him sound, he swore, on being called by the plaintiff, that he had not given any warranty, and Lord *Ellenborough* allowed the plaintiff to call another witness to prove, that at the time of the sale he

had expressly warranted its soundness. There can be no rule of law, said Lord *Ellenborough*, by which the truth on such an occasion is to be shut out, and justice perverted. *Alexander* v. *Gibson*, 2 *Campb.* 555. 1 *Phill. Ev.* 294.

R. v. Watson.

In *R.* v. *James Watson*, on an indictment for high treason, tried at the bar of the court of K.B. T. 1817, 2 *Stark. N. P.* 158., it appeared, in the course of the evidence for the prisoner, that a witness, who had been examined for the crown, had been misdescribed in the list delivered pursuant to stat. 7 *An. c.* 21. § 11. It was objected that on the ground of this misdescription his evidence ought to be struck out. *Sed per Curiam.* The objection ought to have been taken in the first instance, otherwise a party might take the chance of getting evidence which he liked, and if he disliked the testimony, he may afterwards endeavour to get rid of it upon the misdescription. Objections to disqualify a witness, such as questions of interest or description, should be taken at first. See the printed report of the trial by *Gurney*, Vol. II. p. 300.

Hearsay evidence.

In general, that which another asserts must be by oath in a court of justice, and no one will be permitted to come into such court, and say upon his oath that he heard such an one declare certain facts to have occurred, but he who makes the declaration must himself repeat it upon his oath. And this is that which is termed hearsay evidence, *viz.* the deposing on oath that certain facts *are*, which facts are only known to the deponent by the relation of some other person.

Hearsay pedigree.

"On enquiring into the truth of facts, which happened long ago, the courts have varied from the strict rules of evidence applicable to modern facts of the same description, on account of the great difficulty of proving those remote facts in the ordinary manner, by living witnesses. On this principle, hearsay and reputation (which latter is the hearsay of those who may be supposed to have known the fact handed down from one to another), have been admitted as evidence in cases of pedigree." *Per Le Blanc* J. in *Higham* v. *Ridgway*, 10 *East*, 120.

Declarations of deceased relations.

Thus declarations of deceased members of the family are admissible evidence to prove relationship, as who was a person's grandfather, or whom he married, or how many children he had, or as to the time of a marriage or of the birth of a child, and the like, of which it cannot be reasonably presumed, that better evidence is to be procured. 1 *Phill. Ev.* 226.

But declarations of servants and intimate acquaintance are not admissible evidence in questions of pedigree. *Johnson* v. *Lawson and another*, *E.* 5 *G.* 4. 2 *Bing.* 86.

Dying declarations. Relationship.

Nor can the dying declarations of a person, as to the relationship between the lessor of the plaintiff and the person last seised of the premises in question (the deceased not being himself a relation, nor in any manner connected with the parties,) be received in evidence in ejectment. *Doe* d. *Sutton* v. *Ridgway*, *M.* 1 *G.* 4. 4 *B.* & *A.* 53. 1 *Phill. Ev.* 224. see *ante*, p. 962.

But hearsay evidence by a pauper of the declarations of his deceased putative father as to the birth-place of the pauper is not admissible. *R.* v. *Erith*, 8 *East*, 539. *See* 1 *Phill. Ev.* 229.

Great light has been thrown upon this subject by the opinions of many of the judges in the late case of the *Berkeley Peerage*,

(*May 13th*, 1811, 4 *Campb.* 401. *S. C.* See also *the case of the Banbury Peerage Claim*, 1809. 2 *Sel. N. P.* 684.) A question was on that occasion proposed to the judges, in the following terms: "Upon the trial of an ejectment respecting *Black Acre* between *A.* and *B.* (in which it was necessary for *A.* to prove that he was the legitimate son of *J. S.*), *A.* after proving by other evidence that *J. S.* was his reputed father, offered to give in evidence a deposition made by *J. S.* in a cause in chancery, instituted by *A.* against *C. D.* in order to perpetuate testimony to the alleged fact (disputed by *C. D.*) that he was the legitimate son of *J. S.*, in which character he claimed an estate in remainder in *White Acre*, which was also claimed in remainder by *C. D.* *B.* the defendant in ejectment did not claim *Black Acre* under either *A.* or *C. D.*, the plaintiff and defendant in the chancery suit. According to law, could the deposition of *J. S.* be received in evidence upon the trial of such ejectment against *B.* as evidence of declarations of *J. S.* the alleged father in matters of pedigree?" The judges, who were present, afterwards stated their opinions at length, and, with only one dissentient voice, agreed in considering the deposition of *J. S.* to be inadmissible. 1 *Phill. Ev.* 230, 231. The opinion of *Lawrence* J. in this case (4 *Campb.* 409. 1 *Phill. Ev.* 231, 232.) is highly worthy of attention.

Legitimacy. The declarations of *deceased* parents, as to whether they were married, or whether the person in question was born before or after marriage, are evidence. *Stevens* v. *Moss*, 2 *Cowp.* 591.

Right of way. So, in questions about a *right of way*, reputation, *i. e.* what old people deceased have said upon the subject, is good evidence. *Bull. N. P.* 295.

Parcel of an estate. So, whether a particular piece of land be parcel of an estate, may be proved by declarations made by a deceased tenant while in possession. *Ib.*

Declarations of persons interested. Widow in possession of premises that she held for her life. *Doe* d. *Human* v. *Pettett*, *M.* 2 *G.* 4. 5 *B. & A.* 223. Ejectment for certain premises at *Fordham*, in the county of *Cambridge*. Plea, general issue. At the trial before *Dallas* C. J. at the last summer assizes for that county, it appeared that *John Human* was the original purchaser of the premises, and that after his death, about 30 years ago, his widow continued in possession for about 20 years, and then died. The defendant was the heir at law of the widow, and the lessor of the plaintiff was the heir at law of *John Human*. In order to show that the widow's possession was not adverse, the learned judge admitted evidence of her declarations during her possession of the premises, showing, that she held the premises for her life, and that after her death they would go to the heirs of *John Human*. The plaintiff had a verdict, and on motion for a new trial, *Abbott* C. J. said, All questions of evidence must be considered with reference to the particular circumstances under which it is offered. Here, the question was, whether the widow had occupied the premises adversely for more than 20 years, and her declarations are offered in evidence to rebut the statute of limitations, and for that purpose I think they were admissible. They were not used to show the quantum of her estate, but only to explain the nature of her possession. R. R.

A declaration by the owner or occupier of adjoining land, that his neighbour's land extends to such a spot, accompanying an

act of forbearance to go beyond the spot for that reason, or without such act, if he speaks against his interest,) is evidence, that the land extends so far. *Sir T. Stanley* v. *White*, 14 *East*, 332. 339. 1 *Phill. Ev.* 163. 245.

And the declaration of a deceased occupier of land, that he rented it under a certain person, is evidence of that person's seisin. *Uncle* v. *Watson*, 4 *Taunt.* 16. *Doe* d. *Baggalley* v. *Jones*, 1 *Campb.* 367. 1 *Phill. Ev.* 245.

In cases of *custom*, reputation by deceased persons, as to the right, may be proved, but not to prove that they, the deceased persons, had said that they had seen certain facts take place, which amounted to an exercise of the right. *R.* v. *Eriswell*, 3 *T. R.* 707.

In a late case, proof by one of the family, that a particular person had many years before gone abroad, and was supposed to have died there, and that the witness had not heard in the family of his having married, was considered by the court of K. B. good *primâ facie* evidence of the person's death without lawful issue. *Doe* d. *Banning* v. *Griffin*, 15 *East*, 293.

The fact of a tenant for life not having been seen or heard of for fourteen years by a person residing near the estate, although not a member of his family, is *primâ facie* evidence of the death of the tenant for life. *Doe* v. *Deakin and another*, 4 *B. & A.* 433.

There are cases, in which a person has been presumed to be still living, though not heard of for some time. But this presumption would not be made, in contravention of another presumption or principal of law, by which every person is supposed not to have acted illegally, till the contrary is proved. Thus, in the late case of *Kea* v. *the Inhab. of Twyning*, 2 *B. & A.* 386., where the question was, whether the children of a second marriage were settled in the appellant parish, the place of the mother's settlement, or whether they were settled as illegitimate children in a third parish where they were born; the question, therefore, depended upon the validity of the second marriage, which took place in about twelve months after the first husband had gone abroad as a soldier on foreign service, and from that time he had not been heard of: it was contended, on the part of the appellant parish, that the first husband must be presumed, in the absence of all proof to the contrary, to be living at the time of the second marriage, and that the children of the second marriage were consequently illegitimate; on the other side, it was answered, that, if the husband was alive at the time of the second marriage, the wife was guilty of bigamy, and that the presumption of his being alive ought not to be favoured, where the inevitable inference must be, that another person had committed a criminal act; and the court of K. B. were of this opinion. The court determined, that the sessions had decided right in holding the second marriage to have been valid, no proof having been given that, at the time of that marriage, the first husband was alive; Mr. J. *Bayley* said, the case was one of conflicting presumptions, and the question was, which presumption ought to prevail: the law presumes the continuance of life, but it also presumes against the commission of crimes, and that, even in civil cases, until the contrary be proved.

A general right may be proved by traditionary evidence; a particular fact cannot. *Per* Ld. *Kenyon* C. J. in *Outram* v. *Morewood*, 5 *T. R.* 123.

Traditionary reputation is evidence of boundary between two parishes and manors.

Nicholls v. *Parker*, 14 *East*, 331. (n.) Upon a question of boundary between two parishes and manors, whether a certain common was within the parish and manor of *H.* or the parish of *B.* and manor of *M.*, *Le Blanc* J. admitted evidence of what old persons, now dead, had said concerning the boundaries, though not as to particular facts or transactions. And this though the old persons were parishioners, and claimed rights of common on the waste which would be enlarged by their several declarations; there not appearing any dispute at the time respecting the right of such old persons.

But not so as to a boundary between two estates. *Clothier* v. *Chapman*, 14 *East*, 331. (n.)

Traditional evidence.

In the case of an indictment against the inhabitants of a *township* for not repairing a highway, evidence of reputation was offered by the defendants, that the occupiers of a certain close had used to repair the road; but Ld. *Kenyon* C. J. would not receive such evidence. He said, that in an indictment against the public, *traditional evidence is admissible*, but not where the public are shifting off the burden upon an individual, for perhaps the tradition may be manufactured by those who want to get rid of the burden. *R.* v. *Inhab. of Wheaton Aston*, *Staff. Sum. Ass.* 1797. *MS. ante*, p. 980.

Declarations made by persons *post litem motam* are not admissible as evidence of reputation. *R.* v. *Cotton*, *Staff. Sum. Ass.* 1813. Cor. *Dampier* J. *MS.* 3 *Campb.* 444. *S. C.*

In civil cases, a party in a cause cannot be a witness for himself, nor can the defendant. (See, however, *Norden* v. *Williamson*, 1 *Taunt.* 378. *ante*, 982.)

But in all criminal prosecutions, the prosecutor may give evidence in support of the charge against the prisoner: in cases of *informations* for *penalties*, the informer, who is the real prosecutor, cannot be a witness, unless the statute which imposes the penalty permit it by special provision. *Gilb. Ev.* 126. *2d edit.*

Character.

In trials for felony and high treason, and in trials also for misdemeanors, (where the direct object of the prosecution is to punish the offence,) the prisoner is always permitted to call witnesses to his general character; and in every case of doubt, such evidence will be entitled to great weight. The enquiry as to the prisoner's general character ought manifestly to bear some analogy and reference to the nature of the charge against him. On a charge of stealing, it would be irrelevant and absurd to enquire into the prisoner's loyalty or humanity; on a charge of high treason, it would be equally absurd to enquire into his honesty and punctuality in private dealings. Such evidence relates to principles of moral conduct, which, however they might operate on other occasions, would not be likely to operate on that which alone is the subject of enquiry; it would not afford the least presumption, that the prisoner might not have been tempted to commit the crime for which he is tried, and is therefore totally inapplicable to the point in question. The enquiry must also be as to the general character; for it is *general character* alone which can afford any test of general conduct, or raise a presumption that the person,

who had maintained a fair reputation up to a certain period, would not then begin to act a dishonest unworthy part. 1 *Phill. Ev.* 165, 166.

This evidence is only admitted in prosecutions which subject a man to corporal punishment, and not in actions or informations for penalties, though founded on the fraudulent conduct of the defendant. *Peake's Ev.* 7.

The true line of distinction, Chief Baron *Eyre* said, is this; in a direct prosecution for a crime, such evidence is admissible; but where the prosecution is not directly for the crime, but for the penalty, as in this information, it is not. *Attorney General* v. *Bowman*, cited 2 *Bos. & Pull.* 532.

Note. In the principal case, which was *Huntley* v. *Luscombe*, it was said by *Lens* Serjt., and not contradicted by the court, that the court of exchequer is not a criminal court, and all suits for penalties of this nature, though for the king, are considered as civil. The penalty was for a breach of the excise laws. 2 *Bos. & Pull.* 532.

On the trial of an indictment for a rape, evidence is admissible on the part of the prisoner, that the woman bore a notoriously bad character for want of chastity and common decency, or that she had previously been criminally connected with the prisoner. In such a prosecution, however, it cannot be shown, that she had a criminal connection with other persons. *Hodgson's case, York Lent Ass.* 1811. cor. *Wood* B. and before all the judges on case reserved. *MS. C. C. R.* 1 *Phill. Ev.* 165.

And, on an indictment for an assault with intent to commit a rape, general evidence of the woman's bad character, previous to the supposed offence, is clearly admissible; but evidence of particular facts, to impeach her chastity, cannot be received in this case more than in the last, not even for the purpose of contradicting her answers in cross-examination. *R.* v. *Clarke*, 2 *Stark. N.P.* 243., before Mr. J. *Holroyd*. Her answers to questions respecting particular facts, not involved in the issue, are conclusive. And if, on cross-examination, she admit her own misconduct in some earlier transactions, it would be proper, on re-examination, to enquire into her conduct subsequent to such transactions, for the purpose of restoring her credit; other witnesses may also be called to show that she has since retrieved her character. *S. C.* 1 *Phill. Ev.* 165.

IV. Of the Manner of giving Evidence.

Which party shall begin.

He who affirms the matter in issue, whether plaintiff or defendant, ought to begin to give evidence. *Lit.* 36.

Evidence to be upon oath.

The evidence both for and against a prisoner ought to be upon oath.

Witness being a peer.

And if a peer be produced as a witness, he ought to be sworn. 3 *Keb.* 61.

Lord *Preston* was committed by the court of quarter sessions for refusing to be sworn to give evidence to the grand jury on an indictment of high treason; and on his being brought by *habeas corpus* into the K. B., *Holt* C. J. said it was a great contempt, and that had he been there he would have fined him, and com-

mitted him till he paid the fine; but being otherwise, he was bailed. 1 *Salk.* 278.

"No lawyer can doubt the power of every court to fine for contempt." *Per Abbott* C. J. *R.* v. *Davison.* 4 *B.* & *A.* 334.

"Of the power of a judge to fine for a contempt of court, I have not the least doubt, and I am of opinion also, that the judge alone is competent to determine whether what is done be or be not a contempt; and that neither this court (*a*) nor any other co-ordinate court has a right to examine the question, whether his discretion, in that respect, was fitly and properly exercised." *Per Bayley* J. *S. C.* 4 *B.* & *A.* 336.

(*a*) *i. e.* the court of K. B.

"No man who pretends to any knowledge of the law can doubt, that a judge of a court of record has authority to fine or imprison for any contempt committed in the face of the court. From the earliest period of our history this authority has been exercised. The year-books record instances of such commitments, and there are similar instances in other books of reports. (*b*) At those times when our ancestors have abolished or restrained improper authorities, they have not touched this, because they found it essential to the due administration of justice. A court of *nisi prius* is a court of record, and the judge presiding in it is therefore invested with the power of committing for contempt." *Per Best* J. *S. C.* 4 *B.* & *A.* 340. See also *R.* v. *Clement,* 4 *B.* & *A.* 218.

(*b*) See 2 *Haw* c. 1. § 15.

Witnesses may be examined apart.

A prisoner cannot insist upon the removal out of court of the witnesses for the crown during the examination of each other as a right. It is a favour which the court may and does grant sometimes. *Per* Ld. C. J. *Treby, Peter Cook's case,* 13 *Howell's St. Tri.* 348. *Et per* Ld. C. J. *Holt, Vaughan's case,* 13 *Howell's St. Tri.* 494. *Et vide* 1 *Phill. Ev.* 268. *S. P. per Rooke* J., *O. B. Sept. Sess.* 1797. 3 *MS. Sum.* 173.

Evidence to be given in the prisoner's presence.

In cases of life no evidence is to be given against a prisoner but in his presence. 2 *Haw. c.* 46. § 1.

Witnesses cannot testify a negative.

In every issue the affirmative is to be proved. A negative cannot regularly be proved; and therefore it it is sufficient to deny what is affirmed, until it be proved. But when the affirmative is proved, the other side may contest it with opposite proofs; for this is not properly the proof of a negative, but the proof of some proposition totally inconsistent with what is affirmed; as if the defendant be charged with a trespass, he need only make a general denial of the fact, and if the fact be proved, then he may prove a proposition inconsistent with the charge, as that he was at another place at the time, or the like. *Bull. N. P.* 298. 3 *Stark. Ev.* 176.

But to this rule there is an exception of such cases, where the law presumes the affirmative contained in the issue. Therefore, in an information against Ld. *Halifax* for refusing to deliver up the Rolls of the auditor of the exchequer, the court of exchequer put the plaintiff upon proving the negative, namely, that he did not deliver them; for a person shall be presumed duly to execute his office, till the contrary appear. *Bull. N. P.* 298. 3 *Stark. Ev.* 380.

When he may be cross-examined.

A witness shall not be cross-examined till he has gone through the evidence for the party on whose side he was produced. See *Colledge's trial,* 8 *Howell's St. Tri.* 592. 1 *Phill. Ev.* 262.

Which party shall conclude.

The counsel of that party which doth begin to maintain the issue ought to conclude. *Tri. per pais*, 220.

V. Of Process to cause Witnesses to appear.

Two ways of causing witnesses to appear.

(A)

(B)

The compulsory means to bring in witnesses are of two kinds. 1. By process of *subpœna* (A) issued in the king's name by the justices, or others, where the trial is to be, for disobedience to which the person served with the process is liable to an attachment. *R.* v. *Ring*, 8 *T. R.* 585. 2. Which is the more ordinary and more effectual means (in criminal cases), the justices that take the examination of the person accused, and the information of the witnesses, may at that time, or at any time after and before the trial, bind over (B) the witnesses to appear at the sessions, and in case of their refusal to be bound over, may commit them for a contempt. 2 *Hale*, 282. *Bennet and Wife* v. *Watson*, 3 *M. & S.* 1. 1 *Phill. Ev.* 8. *Et vide, post.*

But justices have no power to issue a warrant to compel the attendance of a witness refusing to come and appear before them to be examined preparatory to trial, however material the facts may be which such witnesses could prove. *Per Garrow* C. J., and *Burton* J. *Chester Spring Ass.* 1816. *M. S. et vide* 1 *Phill. Ev.* The proceeding by recognizance is the ordinary and more effectual method. 1 *Phill Ev.* 7.

Where a witness is a prisoner in execution.

Where a witness is a prisoner in execution for debt, he must be brought up by *habeas corpus ad testificandum*, to give his evidence. 1 *Phill. Ev.* 5.

Penalty of a witness not appearing

By stat. 5 *El. c.* 9. § 12. If any person (upon whom any process out of any of the courts of record within this realm shall be served to testify or depose concerning any matter depending therein, and having tendered unto him, according to his countenance or calling, such reasonable sum for his costs and charges as (having regard to the distance of the places) is necessary to be allowed in that behalf,) do not appear according to the tenor of the process, having not a lawful and reasonable impediment, he shall forfeit 10*l*, and shall yield such further recompence to the party grieved as to the judge of the court, out of which the process was awarded, shall seem meet, according to the loss that the party which procured the process shall sustain, to be recovered by the party grieved in any court of record.

In civil cases.

No witness is bound to appear *in civil cases*, unless his reasonable expences, for going to and returning from the trial, be tendered him at the time of sending the subpœna, pursuant to 5 *El.* c. 9., nor, if he appears, is he bound to give evidence till such charges are actually paid or tendered. *Chapman* v. *Pointon*, 2 *Stra.* 1150. 13 *East*, 16. *n.* (*a.*) *S. C. Bowles* v. *Johnson*, 1 *Blac. Rep.* 36. 1 *Phill. Ev.* 6.

Except he reside within the weekly bills of mortality, and be summoned to give evidence within them. 3 *Blac. Com.* 369. 1 *Phill. Ev* 6.

Remedy for expences.

One who is *subpœnaed* as a witness and attends at the trial, but there refuses to give evidence unless his expences are paid, and is thereupon not examined, may yet maintain *assumpsit* for his necessary expences of attending against the party who subpœnaed him: there was also evidence of a promise to pay the expences

at the time of serving the *subpœna;* which it was contended was waved by the subsequent refusal to be examined. *Hallet* v. *Mears, M. T.* 1810. 13 *East,* 15. (*a*)

Subpœna, and ticket.

As only four witnesses can be included in one writ of subpœna, several writs are frequently necessary. In order to save expence, it is settled that leaving a ticket, containing the substance of the writ, will be as effectual as the writ itself; but the writ ought to be shown. *The writ or ticket should be served personally on the witness, Smelt* v. *Witmill,* 2 *Stra.* 1054.; and in reasonable time before the day of trial, that he may suffer the less inconvenience from his attendance on the court. *Hammond* v. *Stewart,* 1 *Stra.* 509. 1 *Phill. Ev.* 3, 4.

If a witness who has been duly served with the writ, and has had a tender of the reasonable expences, omit to attend at the trial without a sufficient cause, he is liable to be proceeded against in one of three ways: 1*st.* By attachment for a contempt of the process of the court. 2 *Ld. Raym.* 1528. 1 *Stra.* 510. 2 *Stra.* 810. 1054. 1150. 2 *Cowp.* 846. 2 *Doug.* 561. *Blandford* v. *De Tastet,* 5 *Taunt.* 260. *Horne* v. *Smith,* 6 *Taunt.* 9. 2*dly,* By a special action on the case for damages, at common law. *Pearson* v. *Iles,* 2 *Doug.* 561. 3*dly,* By an action on the stat. 5 *El. c.* 9. § 12. for the penalty of 10*l.* and also for the further recompense recoverable under that statute. But the more usual way is to proceed by attachment. And in order to ground this summary way of proceeding, it is not only necessary to show an ill motive in the witness, or negligence and inattention to the process of the court, but also to prove that the witness was personally served, 2 *Stra.* 1054., and that his reasonable expences were paid or tendered at the time of the service of the subpœna. 1 *Phill. Ev.* 7.

In *criminal* cases, if a witness hath been bound over, and do not appear, he shall forfeit his recognizance.

In case he do appear, he is entitled to his expences in certain cases. See stat. 58 *G.* 3. *c.* 70. § 4. *ante,* title Costs, p. 796.

A. Subpœna to give Evidence.

GEORGE *the fourth, by the grace of God, of the united kingdom of* Great Britain, *and* Ireland, *king, defender of the faith. To* A. B., C. D., *and* E. F., *greeting; we command you and every of you, that all business being laid aside, and all excuses whatsoever ceasing, you do in your proper persons appear before our justices assigned to keep the peace in our county of* ———, *and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, at the general quarter sessions of the peace, to be holden at* ———, *in and for the said county, on* ———, *the* ——— *day of* ———, *at the hour of ten in the forenoon of the same day, to testify the truth, and give evidence on behalf of the inhabitants of the parish of* ———, *in the said county, against* A. O. *in a case of bastardy. And this you are in no wise to omit, nor any of you to omit, on pain of one*

(*a*) At York summer assizes, 1820, *Bayley* J. ruled, that an unwilling witness, who required to be *paid* before he gave evidence, could not demand it. He said, "I fear I have not the power to order you your expences." And on asking the bar if any one recollected an instance, *Scarlett* answered, "It is not done in criminal cases. *Vide* tit. Costs, *ante,* p. 796.

hundred pounds. Witness ———, *the* ——— *day of* ———, *in the* ——— *year of our reign.* C.

Note. There may be four witnesses put in one *subpœna.* 2 *Cowp. R.* 846. 1 *Phill. Ev.* 3.

The name of the witness, though not in the original subpœna, may be inserted therein at any time, if he has been regularly served with a copy. *Per Gibbs* C. J. *Wakefield* v. *Gall*, *Holt's R.* 526.

A subpœna Ticket.

To Mr. A. W.

BY virtue of his majesty's writ of subpœna to you directed, and herewith shown to you, you are personally to be before his majesty's justices of the peace for the county of ———, *at the general quarter sessions of the peace to be holden for the said county at* ——— *in the said county, on* ———, *the* ——— *day of* ——— *next, to testify the truth, and to give evidence on behalf of the inhabitants of the parish of* ——— *in the said county, against* A. O., *in a case of bastardy. And this you are not to omit, upon pain of one hundred pounds. Dated this* ——— *day of* ———, *in the year* ———.

By the Court,
C.

B. B. Condition of a Recognizance to appear and give Evidence.

THE condition of this recognizance is such, that if the above bound A. W. *shall personally appear at the next general quarter sessions of the peace to be holden at* ———, *in and for the said county, and then and there give such evidence as he knoweth, upon a bill of indictment to be exhibited by* A. I., *of* ———, *yeoman, to the grand jury, against* A. O. *late of* ——— *in the said county, yeoman, for the feloniously taking and carrying away* ———, *the property of* ———; *and in case the said bill be found a true bill, then if the said* A. W. *shall then and there give evidence to the jurors that shall pass on the trial of the said* A. O. *upon the said bill of indictment, and not depart thence without leave of the court, then this recognizance to be void, otherwise of force.*

Summons of a Witness. See Summons, Vol. V.

Examination.

[1 & 2 P. & M. c. 13. — 2 & 3 P. & M. c. 10.]

WHEN a party arrested for felony is brought to the justice of peace, he must either discharge, or commit, or bail him.

If he be charged *with suspicion* only of felony, yet if there be no felony at all proved to be committed, or if the fact charged as a felony be in truth no felony in point of law, the justice of peace may discharge him; as if a man be charged with felony for stealing of a parcel of the freehold, or for carrying away what was delivered him, and such like, for which, though there may be cause to bind him over for a trespass, the justice may discharge him as to felony, because it is not felony. 2 *Hale*, 121. *Pult.* 146. *b.*

A person charged with suspicion of felony.

In order to which bail or commitment, the examination or commitment of the parties must first be taken, according to the following statutes.

Depositions to be taken.

By stat. 1 & 2 *P. & M. c.* 13. Intituled "*An act touching bailment of person* (*a*), § 4. Justices [of the peace], or one of them, being of the quorum, when any prisoner is brought before them for any manslaughter or felony, before any bailment or mainprize, shall take the examination (A) of the said prisoner, and information (B) of them that bring him, of the fact and circumstances thereof, and the same or as much thereof as shall be material to prove the felony, shall put in writing before they make the same bailment; which said examination, together with the said bailment, the said justices shall certify at the next gaol delivery to be holden within the limits of their commission.

1 & 2 P. & M. c. 13.

(A)

(B)

By § 5. The said justices shall have authority to bind all such by recognizance (C), (D), or obligation, as do declare any thing material to prove the said offences, &c. to appear at the next general gaol delivery to be holden within the county, &c. where the trial thereof shall be, then and there to give evidence against the party so indicted at the time of his trial; and the said justices shall certify all and every such bond taken before them, in like manner as before is said of bailments and examination. And in case any justice of the peace or *quorum* shall offend in any thing contrary to the true intent and meaning of this present act, then the justices of gaol delivery of the shire, where such offence shall happen to be committed, upon due proof thereof by examination before them, shall, for every such offence, set such fine on every of the same justices of the peace, as the same justices of gaol delivery shall think meet, and shall estreat the same, as other fines and amerciaments assessed before justices of gaol delivery ought to be.

(C) (D)

The penalty of any justice of peace omitting his duty.

This act relates only to cases where the party accused is *admitted to bail*; but by stat. 2 & 3 *P. & M. c.* 10., intituled "*An act to take examination of prisoners suspected of manslaughter or felony*," after reciting stat. 1 & 2 *P. & M. c.* 13. and that the said act doth not extend to such prisoners as shall be committed and not bailed, it is enacted, "that such justice or justices before whom any person shall be brought for manslaughter or felony, or for suspicion thereof, before he or they shall commit or send such prisoner to ward, shall take the examination of such prisoner, and information of those that bring him, of the fact and circumstance thereof, and the same, or as much thereof as shall be material to prove the felony, shall put in writing, within two days after the said examination; and the same shall certify in such manner and

2 & 3 P. & M. c. 10.

1 & 2 P. & M. c. 10.

(*a*) See *Ruffhead's* Statutes at Large, vol. ii. p. 480. But in The Statutes of the Realm published from the original records by authority of Parliament this act is intituled "*An Act appointing an Order to Justices of Peace for the Bailement of Prisoners.*"

2 & 3 P. & M. c. 10.

form, and at such time as they should and ought to do, if such prisoner so committed or sent to ward had been bailed or let to mainprize, upon such pain as in the said former act is limited and appointed, for not taking, or not certifying such examination as in the said act is expressed."

And by § 2. it is further enacted, that the said justices shall have authority to bind all such by recognizance as do declare any thing material to prove the said manslaughter or felony against such prisoner as shall be so committed to ward, to appear at the next general gaol delivery to be holden within the county, &c. where the trial shall be, and certify as aforesaid.

Difference between stats. 1 & 2 P. & M. c. 13. and 2 & 3 P. & M. c. 10.

The difference between the statutes seems to be this: *by the former*, which is confined exclusively to cases where a prisoner arrested for manslaughter or felony *is admitted to bail*, the justices of the peace *must* take the examination of the prisoner and of the witnesses against him, and put the same in writing *before they make the bailment.*

By the latter, which applies only to cases where a prisoner, arrested for manslaughter or felony, *is committed to gaol*, justices are required to take the like examinations, but are not obliged to put them in writing *immediately*, having *two days* given them by the act *for that purpose.*

By stat. 1 & 2 *P. & M. c.* 13. (says Ld. *Hale*), justices of the peace ought to take the examinations of felons (without oath), and the informations of accusers or witnesses (upon oath), and return them to the justices of gaol delivery. 2 *Hale*, 52., 1 *Hale*, 585., *and other authorities.* 1 *Phill. Ev.* 106. See *post*, p. 1005.

N.B. There is nothing in either of the acts to this effect. *Ed.*

And these examinations, (*viz.* of felons), may be read in evidence against the prisoner, and so may the informations of witnesses taken upon oath, if they are *dead*, or kept away by the practices of the prisoner, or *not able to travel* by reason of sickness, or other casualty, for they are judges of record, and the statutes enable and require them to take these examinations; but then oath is to be made in court by the justice or his clerk that these examinations and informations were duly taken. 2 *Hale*, 52. 284. *Bull. N. P.* 242. *Stark. Ev.* 487. But, says Mr. *Starkie*, it seems to be very doubtful whether the mere casual and temporary inability of the witness to attend in a criminal case be a sufficient ground for admitting his deposition, which affords evidence of a nature much less satisfactory than the testimony of a witness examined *vivâ voce* in court, and which might be procured at another time, if the trial were to be postponed. 2 *Stark. Ev.* 487., *et seq.*

Whether depositions before justice admissible in cases of misdemeanors.

The statutes speak only of cases of *manslaughter and felony;* and it does not yet appear to have been expressly decided, whether examinations taken before justices of the peace in cases of *misdemeanors* can be read in evidence.

In *R.* v. *Paine*, 1 *Salk.* 281. 1 *Ld. Raym.* 729. In an information for a libel against the government, upon trial the attorney-general offered in evidence depositions taken before a justice of the peace relating to the fact, the deponent being dead. *Per cur.* (upon advice with the justices of the C. P.) In cases of felony such deposition before a justice, if the deponent die, may be used in evidence by the stat. 1 & 2 *P. & M. c.* 13. But this cannot be extended farther than the particular case of felony, and therefore not in this case.

Ld. *Kenyon* C. J., in delivering his opinion in the *King* v. *Eriswell*, 3 *T. R.* 723., cites this case of *R.* v. *Paine*, and observes that it "was not loosely decided, but was the opinion of this court (K. B.) assisted by the court of C. P."

But from the report of this case in 5 *Mod.* 163. it appears that the deposition in question had been taken before the mayor of *Bristol*, when the prisoner was not present, and therefore he had lost the benefit of a cross-examination. On this ground, the court would not suffer the deposition to be read.

In *R.* v. *Fearshire*, 1 *Leach*, 202., who was tried before Ld. *Mansfield* C. J. at the sittings at *Westminster* after *Trin. T.* 1779, on an indictment for a misdemeanor, the counsel for the prosecution attempted to give parole evidence of the information against the defendant before a justice of the peace, on which the warrant to apprehend him had been granted. Mr. *Dunning*, for the defendant, objected to the admission of this evidence, and Ld. *Mansfield* rejected it; observing, that as *it is the indispensable duty of every justice of peace to take all charges of whatsoever nature, kind, or complexion they may be, in writing*, the presumption is, that he has in this case done his duty by taking the information in writing, and therefore, unless it be previously shown that the deposition was not reduced into writing, parole testimony thereof cannot be received.

Indispensabl[e] duty of justi[ce] to take all charges soev[er] in writing.

If the report of the case of *R.* v. *Fearshire*, 1 *Leach*, 202., be correct, it seems that had the information in question been taken in writing and produced, it would have been admitted in evidence. This point, however, was not directly under consideration before the court, and as it does not appear that the determination in the *King* v. *Paine* has ever been questioned or controverted, it may be said that the only conclusion yet warranted is that the deposition of a witness taken *ex parte* before a magistrate on an examination for a *misdemeanor* cannot be read in evidence on the trial of the party for such misdemeanor, though the defendant be dead, beyond sea, or kept out of the way by procurement of the defendant. *Vide* 4 *Haw. c.* 46. p. 418. 7th *edition.*

Mr. *Lambard*, speaking of these statutes, observes, "Here you may see (if I be not deceived) when the examination of a felon began first to be warranted amongst us. For at the common law, *nemo tenebatur prodere se ipsum*, and then his fault was not to be wrung out of himself, but rather to be discovered by other means and men." *Lamb. Bk.* 2. *c.* 7. *p.* 213. 4 *Blac. Com.* 296.

It was said by Ld. C. J. *Bridgeman*, that justices of the peace were not enabled to take examinations before the stat. 1 & 2 *P.* & *M. c.* 13. *Kel.* 19.

These statutes of 1 & 2 *P.* & *M.* and 2 & 3 *P.* & *M.* positively and expressly direct the justice before whom any person is brought, charged with felony or suspicion thereof, to take the informations upon oath of the prosecutor and witnesses (*a*), and put them in writ-

(*a*) At *Gloucester Spring Assizes, April* 1. 1824, Mr. Baron *Garrow*, in the course of his address to the grand jury, said, "It was two centuries since we had had the benefit of examinations taken on oath before magistrates, and it had recently been determined, in cases of witnesses dying after such examination, that evidence of their testimony so taken might be given in evidence on the trial; or that such written depositions might be read in evidence, as if the person had been living to give that evidence *vivâ voce*; though formerly, to the great inconvenience of public justice, by persons dying, there was no evidence upon which

ing, and likewise to take the examination of the person accused, but not upon oath, and put into writing; which informations and examinations must be returned to the next general gaol delivery or session of the peace, as the case shall require, and being sworn by the justice or his clerk to be truly taken, may be given in evidence against the offender. 2 *Hale*, 120. 1 *Hale*, 585.

Oral testimony.

The law presumes that every man does his duty until the contrary be proved, and therefore will not permit oral testimony to be given of a prisoner's examination or confession before a magistrate, unless it be most clearly substantiated, that such examination or confession was not reduced into writing as the statutes require. So ruled in *R.* v. *Jacobs and two others*, 1 *Leach*, 309. Tried before *Gould* J. at the *O. B. Feb. Sess.* 1784, for a highway robbery. *R.* v. *Hinxman*, 1 *Leach*, 310. n. (*a*). *S. P.*

Confessions not taken in writing, if made freely and voluntarily, are admissible.

But if a confession be clearly and satisfactorily proved not to have been taken in writing, and to have been made freely and voluntarily, it is sufficient to convict a prisoner without any corroborating evidence.

Daniel Hall and two others were convicted at *Stafford Lent Ass.* 1790, of burglary. The evidence was clear against the two others; but excepting one or two slight circumstances, certainly not sufficient of themselves to have put *Hall* on his defence. The only evidence against him was his examination before the magistrate which was not taken in writing, either by the magistrate or by any other person, but was proved by the *vivâ voce* testimony of two witnesses who were present, and which amounted to a full confession of his guilt. The case was referred to the consideration of the judges, whether this evidence of the confession was well received; and all the judges (except *Gould* J.) were of opinion that the prisoner was legally convicted, and he was afterwards executed. Cited *per Grose* J. in delivering the opinion of the judges in *Lambe's case*, 2 *Leach*, 559.

A confession made under the idea of being admitted a witness for the crown is not a voluntary confession.

N. B. — The prisoners in this case were tried before *Adair* Serjeant who sat on the crown side for Mr. Justice *Wilson*. During the trial a man of the name of *Tart* was among others produced to prove the prisoner *Hall* had desired him to apply to the justice to admit him as a witness for the crown; for that he had not entered the house, but had only stood at the door while the other two prisoners went up stairs to commit the felony, but Mr. *Manley*, the prisoners' counsel, objected, that as this confession was made with a view and under the hope of being thereby permitted to turn king's evidence, it was not admissible in evidence against the prisoners; and the learned judge being of opinion that this was not *a voluntary confession*, the testimony of *Tart* was rejected.

the party could be tried; and thus many offenders escaped from justice. In taking these depositions he begged them to observe this advice, which was, that they should be not depositions full of technical terms introduced from *Burn's Justice*, but that all depositions should be taken in the *presence of the party accused*, and taken down in the exact natural language and peculiar expressions used by prosecutor or witnesses. This would prevent the deponents being unable to recollect what they had said. Many deponents, on the contrary, were filled up either with Latin words or law technicalities, which, when read over to the witnesses, it was impossible they could understand. The defendant, in all such cases, should be permitted to cross-examine the witnesses; and the depositions should be taken down, in all particulars, completely and accurately as the evidence was actually given."

A similar doctrine was held by Ld. Chief Baron *Richards*, in the following case. *R.* v. *John Wilson, Durham Sum. Ass.* 1817. 1 *Holt*, 597. The prisoner was indicted for uttering forged notes, knowing them to be forged. There was nothing particular in the immediate act of uttering; and the question was, as to the prisoner's knowledge. An accomplice was the principal witness; and to confirm his evidence, the counsel for the prosecution produced the prisoner's examination before the magistrate who committed him. It was tendered not as a confession, but as containing facts which appeared upon the prisoner's examination confirmatory of the testimony of the accomplice. The magistrate being examined, stated, that he held out no hopes or inducement to the prisoner, employed no threats, but that he had examined him at a considerable extent, in the same manner as he was accustomed to examine a witness. The prisoner, however, was not sworn. — *Richards* Ld. C. B. I think I am not at liberty to suffer this examination to be read. No matter whether a prisoner be sworn or not. An examination of itself imposes an obligation to speak the truth. If a prisoner will confess, let him do so voluntarily. Ask him what he has to say? But it is irregular in a magistrate to examine a prisoner in the same manner as a witness is examined. I must reject this examination. The prisoner was acquitted.

The examination of a prisoner before a magistrate who examines such prisoner as a *witness*, although he holds out no threat or inducement, cannot be used against him.

As to the admissibility of depositions taken on stat. 1 & 2 *P. & M.* c. 13. the following important case has recently been decided by the judges.

R. v. *Charles Smith.* The prisoner was indicted for the wilful murder of *Charles Stuart*, on the night of the 3d of *Sept.* 1816. It appeared that the prisoner on the 4th of *Sept.* was brought before two magistrates upon a charge of assaulting *Charles Stuart*, and of having robbed a manufactory which *Stuart* had been employed to guard. The principal question was, as to the admissibility of the deposition of the deceased, which was taken before the magistrates upon that occasion, under the following circumstances. The clerk of the magistrates took down the deposition of the deceased which he produced at the time. The oath was administered to the deceased before any part of the deposition was written, and the clerk then proceeded to take down his statement. The prisoner was not present when the deceased commenced his statement, and when the magistrates' clerk began to take it down in writing. The prisoner was brought into the room, before the examination was finished, and before the last three lines were written down. The prisoner was then informed that the magistrates were taking the deposition, and he was desired to attend. The oath was then again administered to the deceased, in the presence of the prisoner, and the whole of the deposition, which had been already committed to writing from the mouth of the deceased, was read over to the prisoner very distinctly and slowly. After this had been done the deceased was asked in the presence and hearing of the prisoner, whether what had been so written was true, and what he meant to say, and the deceased answered that it was perfectly correct. The magistrates then proceeded to examine the deceased further, and the deceased stated, in the presence and hearing of the prisoner, that which was stated in the last three lines of the deposition of the deceased. The deceased appeared to be perfectly collected at the time.

Depositions of the deceased taken under the stat. 1 P. & M. c. 13. are admissible, although not wholly taken in the presence of the prisoner, if the party in his presence was re-sworn, and the deposition repeated and signed, for he had an opportunity of cross examining.

R. v. Charles Smith.

The prisoner was asked afterwards, whether he chose to put any questions to the deceased, but he did not ask any, he merely said, "God forgive you, *Charles*." The deceased signed the deposition in the presence of the magistrates, and of the prisoner, and after he had signed it, the magistrates signed it in the presence of the deceased and of the prisoner. On the part of the prisoner it was objected, that the deposition of the deceased could not be read in evidence: first, because the prisoner did not hear the questions put or the answers given, and had not the opportunity of seeing the manner in which the answers were given, except as to the last three lines of the deposition, and therefore it was contended, that the case did not come within the statutes 1 & 2 *P. & M. c.* 13. and 2 & 3 *P. & M. c.* 10., which made depositions in any case evidence; and, secondly, because the examination under those statutes is confined to the offence with which the prisoner is charged at the time; that the prisoner, in this case, was charged with an assault and robbery, and, therefore, although the deposition in question might possibly have been admissible in evidence, upon an indictment for the assault, or for the robbery, it could not be admitted upon the trial of the present charge, which was for murder, no such offence having been committed at the time when the deposition was taken; but Ld. C. B. *Richards* was of opinion, that the evidence was admissible, since the deceased had been re-sworn in the presence of the prisoner, and had repeated what he had stated before, and the prisoner therefore had an opportunity of cross-examining him. His lordship also cited the case of the *King* v. *Radbourne*, 1 *Leach*, 457., where the deceased had been examined in the presence of the prisoner, and the deposition had been read upon the trial. The jury found the prisoner guilty. Ld. C. B. *Richards* afterwards respited the execution, in order that the opinion of the judges might be taken, as to the admissibility of this evidence, and a great majority of those present being of opinion that the evidence had been properly received, the prisoner was executed. *R.* v. *Charles Smith*, *MS. C. C. R.* 1817. 2 *Stark. N. P.* 208. 1 *Holt's Rep.* 614. *S. C.* 2 *Stark. Ev.* 488, 489.

How long the prisoner may be detained before examination.

Shall take his examination.] And in order thereunto, if by some reasonable occasion the justice cannot at the return of the warrant take the examination, he may by word of mouth command the constable or any other person to detain in custody the prisoner till the next day, and then to bring him before the justice for further examination. And this detainer is justifiable by the constable or any other person, without showing the particular cause for which he was to be examined, or any warrant in writing. 1 *Hale*, 585. 2 *Hale*, 120.

But the time of the detainer must be no longer than is necessary for such purpose. In *Scavage* v. *Tateham* it was holden that a party could not be detained sixteen days; and it was there said that the space of three days (*a*) is a reasonable time. *Cro. Eliz.* 829. 2 *Haw. c.* 16. § 12. See the case of *Kendal & Roe*, 12 *Howell's St. Tri.* 1376.

Power of justice of the peace to commit for further examination.

Mr. Justice *Park*, in his charge to the grand jury at *Monmouth Sum. Ass.* 1823, said, "You are here assembled as grand jurors,

(*a*) The usual practice at the present day is stated to be from three days to three days, by a written *mittimus*. 1 *Chitt. C. L.* 75. *Vide ante*, title Commitment, p. 685.

though many of you are magistrates, and through you I must address what I am about to say to magistrates in general. There has been a great irregularity in the commitment of the man in the borough gaol charged with horse-stealing. It is the duty of those who administer justice never to neglect the petitions of the poor; and I received a letter purporting to be signed by this prisoner, stating and complaining that he had been committed on the 27th of *May* last for further examination, that he never had been further examined, and that he never had been, up to that time, (the 25th *July*,) committed for trial! I took for granted it was like many of those letters which persons in my situation often receive; but when the calendar was presented to me on *Tuesday* morning, at *Hereford*, I then found he was, on the 30th *July*, committed for trial, a period of two calendar months and three days after he was first examined! I received from a magistrate of the borough, this morning, an account of various proceedings, and probably satisfactory reasons could be given for this delay, and it is not to find fault with this that I mention it. I do it as a matter of caution to all magistrates, and to state what I conceive to be the law on the subject. That a magistrate may commit for further examination there can be no doubt, because it is not always that the witnesses can be brought forward in the first instance, or the matter may not be ripe for trial; but the further and absolute commitment must be in a reasonable time. What is a reasonable time is a mixed question of law and fact, which those who are to exercise a judgment upon it must decide at the time, but, generally speaking, and without exception almost, two whole months cannot be a reasonable time. A magistrate ought as speedily as possible to make all enquiry. I state that with the greatest confidence, because I can state it on the authority of the twelve judges of *England;* for a case was submitted to us about two years ago, by H. M.'s command, in which that point incidentally came under consideration, and the judges were of opinion, that a further commitment could only be for a *reasonable* time, and that the jury must have found the commitment to be only for a reasonable time, otherwise the man would have been acquitted. (*a*) It is distressing to see in the calendar of

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(*a*) The editor is enabled to explain this allusion of Mr. Justice *Park. Samuel Gooding* was convicted at the *London* sessions in *May*, 1820, for assisting *John Henry Davis* to escape from the *Giltspur-Street* compter, where he had been confined on a charge of forgery. The case was afterwards submitted by H. M. to the judges, in consequence of a petition presented by the prisoner *Gooding*, alleging, that *Davis* never was in *legal* custody, and, therefore, he, (*Gooding*,) could not legally be found guilty in aiding his escape, the fact being, that *Davis* at the time of the escape was under commitment for *further examination merely*, but *no warrant, commitment, or written authority* was ever made out by the lord mayor, (who was the committing magistrate,) or any other justice of the peace. The only question submitted to the judges was, whether a commitment for *further examination* was legal, not being in writing. Their lordships were unanimously of opinion, that *such* a commitment for *a reasonable time*, though *not in writing*, was good. (See 2 *Hale*, 120, 121., and *Cro. Eliz.* 829. *Scavage* v. *Tateham.*) But they added that they considered *reasonable time* to be a mixed matter of law and fact; and that as the facts of the case were not fully detailed, they could form no opinion *in fact* whether the time in the particular case was, or was not, a reasonable time: but they presumed that it must have appeared at the trial that the time *was* reasonable, as otherwise he ought to have been acquitted. *MS.* See *Davis* v. *Bank of England*, *M.* 1824. 2 *Bingh. R.* 393.

so respectable a county a commitment of this description, and that a man committed on the 27th of *May*, 1823, for further examination, should not have been further examined until the 30th of *July* following."

Prisoner's examination not to be upon oath.

The examination of the person accused ought not to be upon oath. 1 *Hale*, 585. *Phill. Ev.* 106.

And where the examination of a prisoner before the magistrate *purports* to have been taken on oath, no evidence on the trial is admissible to shew that in fact the examination was not on oath; as appears in the following case.

R. v. *Smith and Hornage*, *York Spring Ass.* 1816. 1 *Stark*, *N. P.* 242. This was an indictment for sacrilege alleged to have been committed in *Sheffield* church. The prosecutors tendered in evidence the examination of *Hornage* before the magistrate previous to his commitment; this was written under the following words, which, except as to the name, were printed; "The examination of ——— *Hornage*, taken on oath before me," &c. and was undersigned by the magistrate. — Upon the objection being taken, the examination was rejected, because it purported to have been taken on oath, and *Le Blanc* J. would not permit a witness to be examined for the purpose of shewing that no oath had in fact been administered to the prisoner, saying that he could not allow that which had been sent in under the hand of a magistrate to be disputed.

A prisoner, when taken on suspicion before a magistrate, is to be allowed to speak voluntarily, and give his free account; and he ought not to be examined or questioned by the magistrate like a common witness: and in *R.* v. *Wilson*, *Holt's N. P. C.* 597., when a person had been so examined, his account was rejected by *Richards* C. B. as inadmissible, though nothing like a threat or promise had been used. 1 *Phill. Ev.* 106.

If the offender, upon his examination before the justice of the peace, shall confess the matter, it shall not be amiss that he subscribe his name or mark to it. *Dalt. c.* 164. *p.* 377.

The examination of the prisoner when reduced into writing ought to be read over to him, and is usually tendered to him for his signature: it is usually signed also by the magistrate. The signatures, however, of the magistrate and prisoner are not essentially necessary, but only for precaution and facility of future proof.

In *Lambe's* case, 2 *Leach*, *C. C.* 625., it was held by a majority of the judges, that an examination containing the prisoner's confession, taken in writing by a committing magistrate, and read over to the prisoner, who admitted it to be true but refused to sign it, would have been evidence at common law, and was not rendered inadmissible by any provision in stats. 1 & 2 and 2 & 3 *Ph. & M.* *Vide ante, tit.* Confession. But if the prisoner had not made any admission of the truth of its contents, and had only refused to sign

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An attorney has no right to be present at examination of persons charged with felony.

An attorney has no right to be present during the investigation of a charge of felony before a magistrate. *R.* v. *Borron*, Esq. *H.* 60 *G.* 3. and 1 *G.* 4. 3 *B.* & *A.* 432.

Cox, gent. *one*, &c. v. *Colcridge*, Esq. and *another*, *M.* 1822. 1 *B.* & *C.* 37. a prisoner when examined before magistrates on a charge of felony is not entitled as of right to have a person skilled in the law present as an advocate on his behalf, it being a preliminary investigation only, and not conclusive upon him. (See also Vol. III. tit. Justices of the Peace, § v.)

it after it had been read over to him it could not have been received in evidence. *R.* v. *Telicote,* 1 *Stark. R.* 483.

Minutes of the prisoner's examination, which have not been signed by him, nor read over to him after they were taken in writing, though they cannot be admitted as evidence as a judicial examination, may yet be used by a witness who was present when the minutes were made, as a memorandum to refresh his memory. *Layer's case,* 16 *Howell's St. Tri.* 214. 1 *Phill. Ev.* 107.

Proof of information. Information taken before a justice of the peace or coroner, pursuant to the stats. of *P. & M.*, before they are admitted in evidence against the party accused, ought to be regularly proved by oath of the justice or coroner who took them, or by the clerk who reduced them to writing, to be the true substance of what the informer stated upon oath. 2 *Hale, P. C.* 57. 284. 1 *Phill. Ev.* 379. But it is necessary to prove that they were signed by the witness. *R.* v. *Fleming & Wyndham,* 2 *Leach,* 926. 2 *Stark. Ev.* 486. *infra.*

Witnesses. *Information of them that bring him.*] Or of other witnesses, whom the justice may cause to appear before him in pursuance of his summons (E) for that purpose. *Dalt. c.* 164.

(E)

To be examined on oath. And this information must be upon oath. *Dalt. c.* 164. 1 *Hale,* 586.

Quakers. And, therefore, if a quaker be witness, his affirmation must not be taken in this case; for by stats. 7 & 8 *W. c.* 34. § 6. and 22 *G.* 3. *c.* 46. § 36. it is provided that no quaker shall be permitted to give evidence in any criminal cases, unless it be upon oath.

It is not essential to the validity of depositions, that they should be signed by the deceased witness. In *Flemming's* case (2 *Leach,* 854.) on an indictment for a rape, all the judges concurred in opinion, that the deposition of a girl deceased, on whose person the crime had been perpetrated, taken on oath by the committing magistrate, had been properly admitted in evidence at the trial, though such deposition was not signed by the deceased. 1 *Phill. Ev.* 352.

Or as much thereof as shall be material to prove the felony.] Yet it seemeth also just and right, that the justices who take information against a felon, or person suspected of felony, should take and certify as well such information, proof, and evidence, as goeth to the acquittal or clearing of the prisoner, as such as makes against the prisoner: for such information, evidence or proof so taken is only to inform the king and his justices of gaol delivery of the truth of the matter. *Dalt. c.* 165.

Object of legislature in passing stats. P. & M. One of the objects of the legislature in passing the statutes was to enable the judge and jury, before whom the prisoner is tried, to see whether the witnesses at the trial are consistent with the account given by them before the committing magistrate. See the Judgment in *Lambe's* case, 2 *Leach,* 552. Thus it was admitted in Ld. *Stafford's* case, 7 *Howell's St. Tri.* 1361. *et. seq.* 2 *Haw. c.* 46. § 22. that the depositions of a witness, taken before a justice of the peace, might be read at the desire of the prisoner, in order to take off the credit of the witness by shewing a variance between the depositions and the evidence given in court *vivâ voce,* 1 *Phill. Ev.* 353.

Shall certify at the next gaol delivery.] And yet for petty larcenies, and small felonies, the offenders may be tried at the

quarter sessions, and the examinations and informations may be certified thither. *Dalt. c.* 164.

A *mandamus* will not lie to compel a magistrate to produce depositions taken before him on a charge of felony, for the purpose of founding an indictment of perjury against the deponents: the magistrate must be subpœnaed to produce the depositions, which may be read in evidence before the grand jury. (a)

In the matter of ———, *one of the Justices of the Peace for the County of Bedford, M.* 60 *G.*3. 1 *Chitt. Rep.* 627. On motion for a rule to show cause why a writ of *mandamus* should not be issued, directed to a magistrate for the county of *Bedford*, commanding him to produce certain depositions taken before him, on a charge of felony, in order to enable the party against whom the complaint was made to institute a prosecution against the deponents for perjury. — *Abbott* C. J. This is an application completely without precedent; and as no case is cited in support of it, I see no reason why we should assume a power which it does not appear the law has afforded us. I am not aware of any thing at all analogous to such a motion. We have no power to issue a *mandamus* to a magistrate for any such purpose as that stated at the bar. — *Bayley* J. You may subpœna the magistrate before the grand jury, and from hearing the depositions taken before him read, the grand jury may make a presentment. *R. R.*

To be holden within the limits of their commission.] And yet examinations taken by justices of the peace in one county, may be by them certified in another county, and there read, and given in evidence against the prisoner. *Dalt. c.* 164.

To bind by recognisance.] And upon refusal may commit the person refusing. 1 *Hale*, 586.

A justice of the peace may commit a *feme covert* who is a material witness, upon a charge of felony brought before him, and who refuses to appear at the sessions to give evidence, or to find sureties for her appearance.

Bennet and wife v. *Watson and another, T.* 1814. 3 *M. & S.* 1. Trespass for assault and imprisonment of the wife. *Plea*, not guilty. At the trial before *Thompson* C. B. at *Kent Lent Ass.* 1814, a verdict of one shilling damages was found against one of the defendants (the plaintiff having failed in proving notice to the other.) The case was this: the defendant *Watson* was a magistrate residing at *Woolwich*, and *Newhall*, the other defendant, a constable of that place. On the 1st of *January*, 1813, a person having been apprehended on suspicion of felony, and carried before *Watson*, the plaintiff's wife was examined as a witness against the prisoner, and after her examination was desired by *Watson* to procure her husband's recognizance for her appearance at the next quarter sessions. Not having done so, she was, on the 13th of *January*, sent for by *Watson*, who again requested her to procure her husband, or some other person, to be surety for her appearance to give evidence at *Maidstone*, where the sessions were to be holden: to which she answered that she would not go, and nobody should make her. Persisting in her refusal, she was, on the 14th of *January*, conveyed by *Newhall* (under warrant from *Watson*) inside the coach to *Maidstone*, where, on the 15th, she gave evidence, and the prisoner was convicted: and

(a) But in the case of the *King* v. *Smith*, 1 *Stra.* 126, a rule was granted after time had been taken to deliberate, to compel a justice of the peace to cause an examination taken before him to be produced at the *trial*, and to give the party a copy in the mean time: and in *Welch* v. *Richards*, *Barnes*, 468. in an action for a malicious prosecution, a rule was obtained for the committing magistrate to show cause why he should not permit the plaintiff to inspect and take a copy of the information at his own expence, and cause the original information to be produced at the trial; and after cause shown, the rule was made absolute on the authority of the case in 1 *Str.* 126. The practice and authorities are stated in 1 *Chitt. Crim. L.* 88, 89. 573. 585.

without her evidence he could not have been convicted.—A *R. N.* having been obtained, 2 *Haw. B.* 2. *c.* 8. § 58. and *c.* 16. § 2. were cited to shew that justices may commit those who refuse to be bound, if it appear that they can give material evidence.—After argument, Ld. *Ellenborough* C. J. said that the law intended that the witness should be forthcoming at all events, and it is a lenient mode which the statute provided to permit the witness to go at large upon his own recognisance. However, that is only one mode of accomplishing the end, which is the due appearance of the witness; therefore, when that mode as well as the end is frustrated, as far as it can be, by the witness's refusal, it seems but reasonable that the justice should be warranted in committing, which is the only means left of securing the end. *Le Blanc* J. said, the justice is not to commit by way of punishment, but in order that crimes may not go unpunished, he is to secure the appearance of the witness, who is to establish the delinquency, after he shall have been examined before him on oath. The statute has provided that the magistrate shall bind him by recognisance. If he had done more than was necessary to secure her appearance, it would have been bad; but in this instance he has done no more than was necessary for that purpose. *Dampier* J. said, the power of commitment is absolutely necessary to the existence of the stat. of *Ph. & M.*, for unless there were such a power, every person would of course refuse to enter into a recognisance, and the magistrate could not compel him; and then, if he could further avoid being served with a subpœna, the party delinquent might escape unpunished. This consideration coupled with Ld. *Hale's* judgment, founded on the practice, seems to me sufficient to establish the power. Rule absolute.

Bennet *v.* Watson.

But a justice of the peace is not authorised by law to commit a witness willing to enter into a recognisance for his appearance to give evidence against an offender merely because such witness is unable to find a surety to join him in such recognisance, nor ought the justice to require such surety. The party's own recognisance, (at the peril of commitment) is all that ought to be required. So held *per Graham* B. *Bodmin Sum. Ass.* 1817. *MS.*

At *Somersetshire Sum. Ass.* 1817. It appeared that two poor women, witnesses in trifling cases, had been imprisoned nine months on account of the prevalence of a malignant fever in *Ilchester* gaol, which prevented the prisoners from being sent for trial in the spring to *Taunton* gaol.

The practice of committing witnesses unable to find sureties for their appearance is clearly repugnant to every principle of the English law.

Illegality of committal of witness for want of sureties to appear to give evidence.

And at the *Sum. Ass.* 1821, for the same county, Mr. Baron *Graham*, in his charge to the grand jury, expressed in the strongest terms his disapprobation, at finding that a boy of only eleven years of age had been sent to gaol and kept there till the assizes, for want of sureties to appear as a witness to give evidence against a man committed upon a charge of felony. He had not expected to meet with such an instance in this country in the present enlightened age; it resembled the barbarous practice of days long since gone by. When witnesses had given their depositions, it was the duty of magistrates to bind them over to appear at the assizes or sessions to give evidence against the prisoner; and per-

Illegality of committing witness for want of sureties to give evidence.

haps, in some cases, they might be justified in requiring sureties from the witness. But if a poor man or woman, not resident at or near the place, should be a necessary witness, it was too much to require sureties, and in default thereof to commit them: the magistrate's duty was to bind them over to appear on their own recognisance, and not to ask impossibilities. But to send an innocent child, only eleven years old, to gaol for three months, because he could not obtain two responsible persons to be bound for his appearance to give evidence, was most unjustifiable; it was inflicting upon him, considering his tender age, by an imprisonment of three summer months, a greater punishment than the culprit himself would, if convicted, receive. In Italy, it was true, this practice prevailed of old; but what was the consequence? When assassinations and the most atrocious crimes were openly committed in their streets, persons present and eye witnesses, instead of preventing or appearing against the criminals, ran away and hid themselves, because in that country the witnesses were sent to prison together with the accused, to secure their attendance at the trials. He could not refrain from making these animadversions on this practice, which he trusted would never again occur.

Custody of depositions.

In an action for maliciously, and without probable cause, charging plaintiff with an assault before a magistrate, the magistrate proved that the depositions taken before him were reduced into writing, and that he delivered them at the court of quarter sessions to the clerk of the peace, or his deputy. The clerk of the peace stated that a bill of indictment for the assault was preferred, and that the grand jury returned *ignoramus*, and that it was usual, in such case, to throw away or destroy the depositions; that he had searched among his papers, and could not find them. Held, that parol evidence of their contents was admissible, and that it was not necessary to call the deputy clerk of the peace to show that the original depositions were not in his possession, inasmuch as it was his duty, if he had received them, to have delivered them to his principal; and not being in his custody, it was to be presumed that they were lost or destroyed. *Freeman* v. *Arkell*, *M.* 4 *G.* 4. 2 *B.* & *C.* 494.

The parties grieved ought to be bound, not only to give evidence, but also to prefer a bill of indictment against the prisoner. *Dalt. c.* 164.

44 G. 3. c. 102.

By stat. 44 *G.* 3. *c.* 102. Any judge of the superior courts in *England* or *Ireland*, and of Great Session in *Wales*, and the county palatine of *Chester*, may award writs of *habeas corpus*, for bringing prisoners before courts of record to be examined as witnesses. See *ante*, *tit.* Bail, § IX.

A.

A. The Examination of a Person charged with Felony.

County of ——— to wit. } *THE examination of* A.O., *of* ———, *labourer, taken before me* J. P. *esquire, one of his majesty's justices of the peace, acting in and for the said county of* ——— [or, in the case of bail, *taken before us* ———, *two of his majesty's justices of the peace acting in and for the said county, one of us being of the quorum,*] *the* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———.

The said A.O. *being charged before me,* [or, *us*] *the said justice, on the oath of* A. I., *of* ———, *yeoman, with feloniously stealing, at the parish of* ———, *in the said county, on the* ——— *day of* ——— *instant, one silver spoon of the value of ten shillings, the property of the said* A. I.

Upon his examination now taken before me [or, *us*] *saith* ———.

A. O.

Taken before me [or, *us*] *the day and year above mentioned.* J. P.

It is recommended that the justice, or his clerk, do take the examinations of persons accused in the first person, and in the identical words and expressions used by the prisoner. See *R.* v. *Sexton, ante,* 1 *Phill. Ev.* 106.

B. The Examination of a Witness against a Person charged with Felony.

B.

County of ——— to wit. } THE *examination of* A. I., *of* ———, *yeoman, taken on oath this* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———, *before me,* J. P. *esquire, one of his majesty's justices of the peace acting in and for the said county of* ———, *in the presence and hearing of* A. O., *charged this day before me the said justice with feloniously stealing, at the parish of* ———, *in the said county, on the* ——— *day of* ——— *instant, one silver spoon of the value of ten shillings, the property of the said* A. I.

This deponent saith, that on the ——— *day of the present month of* ——— *he saw the silver spoon now produced in the possession of the prisoner* A. O. [or, as the case may be.]

Taken and sworn before me the day and year above mentioned. J. P. A. I.

The plain and obvious meaning of the words spoken by the witness, ought to be taken down, and not merely the result of the evidence. *Vide* 1 *Phill. Ev.* 106.

C. Recognisance to prefer a Bill of Indictment, and give Evidence.

C.

County of ——— to wit. } BE *it remembered, that on the* ——— *day of* ———, *in the* ——— *year of the reign of* ———, A. I., *of* ———, *in the said county, yeoman, personally came before me,* H. C., *doctor of laws, one of the justices of our said lord the king, assigned to keep the peace in the said county, and acknowledged himself to owe to our said lord the king, the sum of* ———, *of good and lawful money of* Great Britain, *to be made and levied of his goods and chattels, lands and tenements, to the use of our said lord the king, his heirs and successors, if he the said* A. I. *shall fail in the condition indorsed.* H. C.

The condition of the within-written recognisance is such, that whereas one A. O., *late of* ———, *was this present day brought before the justice within mentioned by the within bounden* A. I., *and was by him charged with the felonious taking and carrying way* ——— *of the goods of him the said* A. I., *and thereupon*

was committed by the said justice to the common gaol in and for the said county: if, therefore, he the said A. I. *shall and do, at the next general quarter sessions of the peace* [or, *gaol delivery*] *to be holden in and for the said county, prefer, or cause to be preferred, one bill of indictment of the said felony against the said* A. O., *and shall then also give evidence there concerning the same, as well to the jurors that shall then enquire of the said felony, as also to them that shall pass upon the trial of the said* A. O., *that then the said recognisance to be void, or else to stand in full force for the king.*

D.

D. Recognisance to give Evidence.

County of ——— to wit. } *BE it remembered, that on the* ——— *day of* ———, *in the* ——— *year of the reign of* ———, A. W., *of* ———, *in the said county, yeoman, did come before me,* H. C., *doctor of laws, one of the justices of our said lord the king, assigned to keep the peace in the said county, and did acknowledge himself to owe to our said lord the king the sum of ten pounds of lawful money of* Great Britain, *to be made and levied of his goods and chattels, lands and tenements, to the use of our said lord the king, his heirs and successors, if he the said* A. W. *shall fail in the condition hereon indorsed,* [or, *underwritten,* as the case may be].

The condition of the within-written [or, *above written*] *recognisance, is such, that if the within* [or, *above bounden*] A. W. *shall personally appear at the next general quarter sessions of the peace,* [or, *gaol delivery,*] *to be holden at* ———, *in and for the said county, and then and there give such evidence as he knoweth, upon a bill of indictment to be exhibited by* A. I., *of* ———, *yeoman, to the grand jury, against* A. O., *late of* ———, *labourer, for feloniously stealing* ———, *the property of the said* A. I.; *and in case the said bill be found a true bill, then, if the said* A. W. *shall then and there give evidence to the jurors that shall pass on the trial of the said* A. O., *upon the said bill of indictment, and not depart thence without leave of the court; then this recognisance to be void, or else remain in its full force.*

E.

E. Summons of a Witness.

Westmorland. To the constable of ———.

WHEREAS information hath been made before me, J. P. *esquire, one of his majesty's justices of the peace for the said county, that* [here set forth the substance of the complaint]; *and that* A. W., *of* ———, *in the said county, yeoman, is a material witness to be examined concerning the same: These are therefore to require you to summon the said* A. W. *to appear before me, at* ———, *in the said county, on* ——— *the* ——— *day of* ———, *at the hour of* ——— *in the* ——— *noon of the same day, to testify his knowledge concerning the premises. Herein fail you not. Given under my hand and seal, the* ——— *day of* ———, *in the* ——— *year of the reign of* ———.

Exchequer Bills. See **Larceny**, Vol. III., and Stat. 57 G. 3. *c.* 34. Vol. IV. *tit.* **Poor**, p. 184.

ADDENDA.

Alehouses.

Vide, ante, p. 48, 49.

R. v. *The Duke of Norfolk, K. B. M.* 1789. Motion for leave to file a criminal information against the duke of *Norfolk,* for granting licences to several persons to keep public-houses within the city of *Carlisle,* to whom licences had been refused by the magistrates of the city; it being charged that this had been done in order to serve electioneering purposes.—The court granted a rule to show cause.—In *Hil. Term* following, cause was shown on the part of the duke by several affidavits; in one of which the duke denied having acted to serve electioneering purposes, and stated that before he had granted the licences a case had been laid before Mr. *Chambre,* for his opinion upon the "*right of the county justices to interfere in granting licences, within the city of Carlisle;*" and if they had such right, "*whether those justices who did not reside in the ward or division in which the city of Carlisle is situate could with propriety act at Carlisle;*" upon which questions Mr. *Chambre* had given the following opinion.—"The charter of the city of *Carlisle* having no clause expressly giving an exclusive jurisdiction to the corporation justices, I am of opinion that in general the justices of the peace for the county have a concurrent jurisdiction with them, and may act in and for the city of *Carlisle,* as well as for other parts of the county. The proviso in the 2 *G.* 3. *c.* 28., which excepts cities and towns corporate, might probably be inserted with a view to the situation of corporations whose magistrates acted exclusively; but the terms of the proviso are general, and I think the courts of law would not restrain it in point of construction upon mere conjecture; and therefore I think the power of granting licences in the city of *Carlisle* depends upon the statute 5 & 6 *Edw.* 6. only.—Under that statute any two justices may licence, and a general meeting for the purpose is not necessary; neither is there any limitation with respect to the time of granting the licences. But though I think two justices of the county may execute the power, yet they ought to do it with great caution, and upon full inquiry concerning the characters and conduct of those whom they licence, and particularly of those who have before been refused. And I think it would be proper (though not a strict legal requisite) to give notice to the city justices who may have refused, desiring to know the grounds of refusal. Should they be satisfied that the rejection has proceeded from mere party motives, I see no impropriety in their granting licences." And upon the other question the opinion was as follows:—"The stat. 5 *Edw.* 6., on which I think the question depends, gives the power to the justices *generally,* without

confining them to particular divisions; and therefore I think it unnecessary that the licensing justices should be resident in *Cumberland* ward."—This opinion was dated the 15th of *Sept.* 1789: and the duke stated, that before he joined Mr. *Christian* in granting the licences, he sent a letter to the mayor desiring to know the objections upon which the licences had been refused; but the mayor sent him no answer. The court discharged the rule *nisi* for an information. Mr. *Howell* states that he has not been able to discover any note of what took place upon that occasion. See *Howell's St. Tr.* Vol. xxx. p. 489. & 1346.

Apprentice.—(*Parish-binding.*)

[*Vide ante*, p. 138.]

R. v. Inh. of Newark-upon-Trent. A pauper, settled in the parish of *N. C.*, in the county of *Nottingham*, was, pursuant to an order of two justices of the county, bound apprentice by the churchwardens and overseers of that parish to *A. B.* of another parish, in a borough situate in the same county, but having justices who had exclusive jurisdiction therein. The indenture was allowed by the two county justices, but no notice was given to the overseers of the poor of the parish in the borough, of the intention to bind such apprentice, nor did they or any of them attend before the county justices who allowed the indenture,

REX v. *Inh. of Newark upon Trent.* *T.* 1824. 3 *B.* & *C.* 59. Removal of *W. Hales*, his wife and child, from the parish of *Newark-upon-Trent*, in the county of *Nottingham*, to the *township* of *North Collingham*, in the same county, the sessions on appeal discharged the order, subject, &c.—The pauper, *W. Hales*, a poor boy, of and then legally settled in the parish of *North Collingham*, in the county of *Nottingham*, was on 18th *June*, 1817, pursuant to an order of two justices of that county, bound apprentice by the churchwardens and overseers of the poor of the said parish to *Edward Sutton*, of the parish of *Newark-upon-Trent*, in the borough of *Newark-upon-Trent*, in the county of *Nottingham*, by indenture, for a term therein mentioned. A premium of 10*l.* was given with the apprentice to the master by the said churchwardens and overseers, although only 5*l.* was set forth in the indenture as the sum paid. The two justices who signed the aforesaid order afterwards signed and sealed their allowance of the indenture of apprenticeship before the same was executed by any of the other parties thereto. The parishes of *North Collingham* and *Newark-upon-Trent* are distant from each other about six miles, and in the same county. *No notice whatever was given to the overseers of the poor of the parish of Newark-upon-Trent*, or to any of them, of the intention to bind out such apprentice; nor did they or any of them attend before the justices who signed the order and allowed the indenture; nor was any such notice alleged or attempted to be proved to have been given, but the said justices allowed the said indenture without any such proof of service or admission of notice. *Newark* is a borough situate in the county of *Nottingham*, having justices who have exclusive jurisdiction therein. The pauper resided under this indenture in *Newark-upon-Trent* more than forty days. This case was argued in last term by *Chitty* in support of the order of sessions, and *Scarlett* and *Balguy* contrà. There being a difference of opinion on the bench, the Court delivered their judgments seriatim.—*Littledale* J. I am of opinion the indenture of apprenticeship is invalid, because no notice was given to the overseers of *Newark-upon-Trent*, and that no settlement was gained under it. The question depends entirely on the construction of stat. 56 *G.* 3. *c.* 139., which recites that inconveniences had been felt from

binding poor children apprentices to improper persons, and to persons residing at a distance from the parishes to which such children belong.

§ 1. Directs, that before any child shall be bound apprentice by the overseers of the poor of any parish, &c., such child shall be carried before two justices of the county, &c. in which such parish shall be situate, who shall enquire into the propriety of binding such child apprentice to the person proposed; and such justices shall particularly enquire whether the person proposed reside or carry on his business within a reasonable distance from the place, &c. to which such child shall belong, or whether circumstances make it advisable that the child shall be bound at a greater distance. The justices are directed to examine the father and mother, and to enquire into the circumstances of the person proposed as the master; and if the justices upon such examination and enquiry think it right the child should be bound, they shall make an order that the overseer shall be at liberty to bind the child apprentice, the order to be delivered to the overseer as the warrant for binding the child, and the indenture shall refer to the order, and the justices shall sign their allowance of the indenture before it is executed by any of the parties. Provided that no such child shall be bound to any person residing or having an establishment in trade in which the child shall be employed out of the county at a greater distance than forty miles from the place to which the child shall belong, unless it belong to a parish above forty miles from *London.*

§ 2. Enacts, that in all cases where the residence or establishment of business of the person to whom any child shall be bound shall be within *a different county or jurisdiction of the peace* from that within which the place by the officers whereof such child shall be bound shall be situate; and in all other cases where the justices of the peace for the district or place within which the place by the officers whereof such child shall be bound shall be situated, and who shall sign the allowance of the indenture by which such child shall be bound, shall not have jurisdiction, every indenture by which such child shall be bound shall be allowed, as well by two justices of the peace for the county or district within which the place by the officers of which such child shall be bound shall be situated, as by *two justices of the peace for* the county or district within which the place shall be situated wherein such child shall be intended to serve.

Provided always, that no indenture shall be allowed by any justice of the peace for the county into which such child shall be bound, who shall be engaged in the same business, employment, or manufacture in which the person to whom such child shall be bound is engaged. And notice shall be given to the overseers of the poor of the parish or place in which such child shall be intended to serve an apprenticeship, before any justice of the peace for the county or district within which such parish or place shall be shall allow such indenture, and such notice shall be proved before such justice shall sign such indenture, unless one of such overseers shall attend such justice and admit such notice.

§ 3. Provided that the allowance of two justices of the peace for the county within which the place in which such child shall be intended to serve an apprenticeship shall be situated shall be valid and effectual, although such place may be situate within a town

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———

and admit such notice. Held by three justices, *Abbott* C. J. dissentiente, that by 56 *G.*3. *c.*139. the indenture was void for want of such notice, and tha the pauper did not gain any settlement by serving under it.

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or liberty within which any other justices of the peace may in other respects have an exclusive jurisdiction.

§ 5. No settlement shall be gained by any child who shall be bound by the officers of any parish, &c. by reason of such apprenticeship, unless such order shall be made, and such allowance of such indenture of apprenticeship shall be signed as hereinbefore directed. — In the present case I think it is not necessary to consider whether notice must, in all cases, be given to the overseers of the parish into which the child is to be bound, whether such parish be in the county to which the child shall belong, or in the district into which it is to be bound, or whether the necessity of the notice to the overseers is to be confined to the cases where the child is to be bound into a different jurisdiction from that to which it belonged. There seems to be one reason why notice should not be necessary in the same county, because the justices have more power and better means of information as to the points to which they are to direct their inquiries before binding an apprentice, and, therefore, there is not the same necessity for notice to the overseers that there is in a foreign county, in which the justices are less acquainted, where they have not the same communication with the overseers, nor the same means of inquiry that they have in their own county; and, therefore, it may appear reasonable that notice should be given to the overseers of a parish in a foreign county into which the child shall be bound, so that between the justices of the county where the binding parish is, and the overseers of the parish into which the child is to be bound, a full investigation may be made as to those points on which the statute directs inquiries to be made. Another reason may be given why notice should not be required, viz. that the second section of the act in which this enactment is contained begins with making provisions in cases where the binding is to be into a different county, and that, therefore, all the provisions in that section ought to be so confined; this last reason, however, does not appear sufficient, because the division of an act of parliament into sections is a mere arbitrary thing, forming no part of the act, and ought not to furnish any rule for interpreting any clause. The only proper way to interpret any sentence is to look at the language of the sentence itself, and the connection it has with the other enactments, without any reference to a division into sections. Much may be said on both sides of the question arising out of the way in which the different sections are worded. There is nothing about notice in the first section, it only comes in the second section. Many comments may be made on the phraseology of that clause, as with reference to different parts of the same clause, and also with reference to the language of the first section. But, without considering that point, it is quite clear that in a binding into a *foreign* district, which this is, notice is requisite in general, unless it can be said, — First, that the clause as to the notice to the overseers is merely directory: or, secondly, that the clause in § 3., that the allowance of two justices of the peace for the county within which the place in which such child shall be intended to serve an apprenticeship shall be situated shall be valid and effectual, although such place may be situated within a town or liberty within which any other justices of the peace may, in other respects, have an

exclusive jurisdiction, supersedes the necessity of giving notice, where the power so given to the county justices is exercised by them.

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I think the clause of notice to the overseers is not merely directory. The object of the clause seems to be, that the overseers of the parish, in the foreign county shall assist the justices of the binding county with such information as they can, as to the points which the act has directed to be investigated, and, therefore, the notice to these overseers seems an essential thing to be attended to, in order to get at all the preliminary information; it must, however, be observed, that in the fifth clause, which says, that no settlement shall be gained unless certain things are done, there is no mention of notice to the overseers. The clause is, "that no settlement shall be gained by any child who shall be bound by the officers of any parish, &c., by reason of such apprenticeship, unless such order shall be made, and such allowance of such indenture of apprenticeship shall be signed, as hereinbefore is directed;" and therefore it appears to be tantamount to saying, that if the order be made, and such allowance signed, the binding shall be effectual, though no notice be given; but inasmuch as the latter part of the second section directs, that the justices of a foreign district are not to allow the indenture till the notice be given to the overseers, and that, therefore, the notice to the overseers must precede the allowance by the foreign justices: the clause in § 5., which requires the allowance of two justices, means an allowance after notice to the overseers, and embodies that as part of the allowance. Then comes the question, whether, if justices of the county exercise the powers given by the third section, the notice to the overseers is dispensed with? The third section does not, in terms, dispense with it, and one cannot see any ground for dispensing with it, merely because the county justices put themselves in the place of the foreign district justices. They can have no more power than the foreign district justices have; but by the second section the foreign district justices are not to sign the allowance till notice has been given to the overseers, and, therefore, if the county justices are to represent the foreign district justices, they should do so in every thing, and therefore only have a conditional power to allow the indenture; that is, after notice to the overseers. It may be contended, that by this third section the separate jurisdictions are all swallowed up and made to form part of the county, for the purposes of this act, and that the powers given to the county justices put them exactly in the same situation as if the particular district was part of their own jurisdiction, and that they may act as if it originally was so: and if that were so, it would become necessary to consider whether the act requires notice in all cases, including those of binding into the same county. But the act has not, in express terms, given the county justices any such power, and it does not appear likely it should be meant; for if the reason of notice to the overseers be, that the justices in the county where the binding parish is, have not the same means of communication, and the same facility of getting information in a foreign county or district that they have in their own, they may by these means bind the child into a county or district where they have not full means of getting information.

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The third section is not compulsory on the county justices, but the foreign district justices may still allow the indenture, but they can only do it after notice to the overseers, and, therefore, there may be two children bound from the same parish into the same foreign district by different means, viz. one by county justices only (I do not speak of the binding overseers) and the other by county justices, followed up by notice to the overseers, and by the allowance of the foreign district justices, and which last would probably be after a fuller inquiry as to the circumstances directed to be inquired about, than the first, and therefore the two bindings would be accompanied by different degrees of information as to the propriety of the binding. It may be said there will be a want of full inquiry if the county justices allow the indenture, where the binding is into a foreign district, and yet the act expressly permits it. But there will be very nearly the same information as if the district justices allow the indenture, because if notice be given to the overseers they will collect all the information they can, which they will communicate to the county justices before the latter allow the indenture. Upon the whole, I think the want of notice to the overseers invalidates the indenture; and as I think the indenture is invalidated, it follows, if I am right, that no settlement was gained. *Holroyd* J. This is a case arising upon the binding of a parish apprentice, and the question is, whether it is a valid binding, pursuant to the stat. 56 *G.* 3. *c.* 139., so as to enable the apprentice by service and residence under the same, to gain a settlement in the parish of *Newark-upon-Trent*, the parish into which the apprentice was bound. It is a binding by the churchwardens and overseers of the poor of a parish within the county of *Nottingham*, made under the order and allowance of two justices of the peace for that county, to a master resident in the parish and borough of *Newark-upon-Trent*, which is a borough and parish within the same county of *Nottingham*, but wherein other persons have an *exclusive* jurisdiction as justices of the peace. But by § 3. of the statute it is provided, that the allowance of two justices of the peace for the county within which the place in which such child shall be intended to serve an apprenticeship shall be situated, shall be valid and effectual, although such place shall be situated in a town or liberty within which any other justices of the peace may in other respects have an exclusive jurisdiction. The objection however is, that notice was not given to the overseers of the poor of the parish of *Newark-upon-Trent*, the parish in which the child was intended to serve the apprenticeship, nor was any such notice proved or admitted before the above magistrates, pursuant to the proviso, which is printed as part of § 2. of the statute. And the question then is, whether this case, which is the case of a binding by one parish in a particular county into another parish within the same county, but in a town where other justices of the peace have in other respects an exclusive jurisdiction, is within that branch of the proviso which requires such notice or proof or admission thereof, before the allowance of the indenture, or whether that would only have been requisite, in case this binding had been into a different county. I am of opinion, that this case is within that branch of the proviso; and if so, then I think, that for

want of such notice and proof, or admission thereof before the justices allowed the indenture, the binding was so invalid as to prevent the apprentice from gaining a settlement under it in the parish of *Newark-upon-Trent*. The proviso as to notice, or the proof or admission thereof, in cases where the same is required, appears to me not to be directory merely, but the want thereof, I think, goes to affect the settlement itself. The fifth section of the statute, enacts that no settlement shall be gained by any child who shall be bound by the officers of any parish by reason of such apprenticeship, unless such order shall be made and *such* allowance of such indenture of apprenticeship shall be signed as directed by the statute. It is true, the statute does not also say "the settlement shall not be gained unless such notice be given," but (in cases where by the statute that notice was required), unless the notice had been previously given, the allowance would not have been *such* as the statute directed. The allowance itself, in such a case, would therefore be null and void for want of the notice; for where a special authority is given to magistrates or others by statute, their acts are null and void, unless they proceed in the manner and under the restriction which the statute itself imposes. In requiring the notice, the legislature may be considered as having in view two objects, the benefit and welfare of the apprentice and the protection of the parish into which it is intended he should be bound. For both purposes the notice to and attendance of an overseer from that parish may be useful before the binding has become conclusive, both with regard to the information he may be able to give the magistrates of the character, circumstances, conduct, and habits of the intended master, and of the state in that parish of the particular trade, and the number of apprentices to it, and to the probability of the child's being able in future to maintain himself by his trade there, after the expiration of his apprenticeship, or instead thereof of his becoming a burden upon the parish. This seems to be equally important, whether the binding be into a parish in the same or in a different county; and the parish, whether in the one case or in the other, may become equally aggrieved by the binding, and equally aggrieved, for want of previous notice of the intended binding, from such parish losing thereby their right of appeal, which by the seventeenth section is given (but it can be exercised within a limited time only) to any person or persons who shall be dissatisfied with any act done by any justice of the peace in the execution of the statute. In order to remedy the grievances recited in the preamble, which recites, amongst others, that many grievances had arisen from the binding of poor children as apprentices by parish officers to *improper persons*, and to carry into effect the objects of the statute, the first section, (which applies to parish bindings whether into a parish within the same or within a different county), enacts, that before any child shall be bound apprentice by the overseers of the poor of any parish, such child shall be carried before two justices of the peace of the county, &c. wherein such parish shall be situate, who shall make certain enquiries there specified; those enquiries particularly regard the fitness, circumstances, and character of the intended master, and appear to be equally material to be enquired into, both with a view to the

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well doing of the apprentice and to the considerations of justice that are due to the parish into which he is to be bound; whether the intended binding be into a parish in the same county, or into a parish in a different county, and with a view to that enquiry, as well as with a view that the parish into which he is to be bound may obtain justice by an appeal, in case the child ought not to be so bound; and in case such binding will probably be injurious to such parish, the notice to the overseers of that parish appears to be equally important, whether the binding is to be into the same or a different county. And if the binding is to be into the same county, those justices are the only justices who are to make those enquiries, and to sign the allowance; but by sect. 2. there is also to be, where the binding is into a different county or jurisdiction of the peace, a further allowance by two justices also of the county or district within which the place shall be situated wherein such child shall be intended to serve. Then follows the proviso upon which the present question arises, and which is printed as part of the second section; but whether it be printed as part of the second section, or had been separated from it by the printer, and made into a third section, can make no difference in the construction of the statute; for in the construction of a statute, the question whether a proviso in the whole or in part relates to, and qualifies, restrains, or operates upon the *immediately* preceding provisions only of the statute, or whether it must be taken to extend in the whole or in part to *all* the preceding matters contained in the statute, must depend, I think, upon its words and import, and not upon the divisions into sections that may be made, for convenience of reference in the printed copies of the statute. The same construction must prevail, I apprehend, in this case, as if the proviso, which has been printed as if incorporated in the second section, had been, as I think it might with as much or more propriety have been, separated therefrom and made into a different section. The proviso in question is as follows: "Provided always, that no indenture shall be allowed by any justice of the peace for the county *into which such child shall be bound*, who shall be engaged in the same business, employment, or manufacture, in which the person to whom such child shall be bound is engaged." This part of the proviso, I think, is *confined* to an allowance by a magistrate of the second county, and to cases where there is a binding from one county into another; and the expression appears to me to be most correct and apt to mark it to be the intent of the legislature that the construction should here be so confined; the expression, "the county *into which* such child shall be bound," appearing to me to imply another county *out of* which he is bound. The same proviso then immediately further proceeds thus: "And notice shall be given to the overseers of the poor of *the parish or place in which such child shall be intended to serve* an apprenticeship, before any justice of the peace *for the county or district within which such parish or place shall be*, shall allow such indenture, and such notice shall be proved before such justice shall sign such indenture, unless one of such overseers shall attend such justice and admit such notice." Here the expression "justice of the peace for the county into which such child shall be bound," which immediately before, as I conceive, confined the first part of the proviso to a binding into a different county, is changed into expressions, both as to

overseers and justices, which let in both descriptions of bindings, in requiring notice to be given, not to the overseers of "the parish or place in the county into which such child shall be bound," but "to the overseers of the poor of the parish or place in which such child shall be intended to serve an apprenticeship, before any justice of the peace for the county or district within which *such* parish or place" (that is, the parish or place in which he is intended to serve, whether it be in the same or a different county,) "shall be, shall allow such indenture." The legislature, as it intends, as I think, to restrain the first part of the proviso to cases of bindings into a different county, adopts the correct expression for that very purpose; and again, where it has not, as I think, such intent of restraint, it abandons that restraining expression which it had just adopted, and uses the more enlarged expression, which here will embrace the whole object and subject matter of the legislature's care and regulations, namely, parish apprentices and parish bindings in general, and not merely parish apprentices bound into a different county. These circumstances shew that the legislature in this very part of the statute, where it plainly, as I think, intends restraint, uses a corresponding restraining expression, when such restraining expression is either necessary or useful for that purpose, and it recurs again to the more enlarged one, when the expression can, according to the legislature's intent, be more extensively applied. This proviso in § 2. is immediately followed by the proviso, printed as § 3.: "Provided always and it is hereby declared, that the allowance of two justices of the peace for the county *within which the place in which such child shall be intended to serve an apprenticeship shall be situated*, shall be valid and effectual, although such place may be situated in a town or liberty within which any other justices of the peace may in other respects have an exclusive jurisdiction." This section, it is not only admitted, (but which, in order to gain a settlement in *Newark-upon-Trent*, must be contended and established,) does extend to and embrace parish apprentices in general and parish bindings, whether into a different county or not, and yet the expression in this section is the same as those in question which are contained in the proviso in the second section. For unless this third section extends to parish apprentices bound to serve in a parish in the same county, the want of an allowance of the indenture by two justices of the exclusive town and liberty of *Newark-upon-Trent* would be fatal to the claim of the apprentice's settlement being established there. And if this section does so extend, then, I ask, upon what principle of construction is it that a different interpretation is to be given to the same expression in the proviso in the second section from that which is to be given to it in the third section? And, if the same interpretation be to be given to both, then no settlement is gained in *Newark* whether that interpretation be according to the restrained or according to the extended construction. In either case the indenture is ineffectual for that purpose; in the former case for want of an allowance of the indenture by two magistrates of *Newark*, and in the latter case for want of notice to the overseers of the parish of *Newark*. The expression, "such child," in the proviso in the second section, includes, I think, parish apprentices in general, and is not confined to "parish apprentices bound into a different county." And the relative ex-

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pressions, "such parish or place," and "such indenture," and "such justice" in that section, and "such place" in the third section, must, I think, be taken to mean (according to their grammatical construction with reference to the context) the parish or place in which the child is intended to serve, and the indenture by which he is so bound, whether it be into a parish in the same or a different county. This, I think, will more distinctly appear by having, in the construction of the first expression "such child," regard to the first section as well as to the second section, and by considering that a different and more restrained construction cannot be given to the expressions in the second section, without getting into this dilemma, either of giving a different interpretation to the like expressions in the proviso in the third section, or else, by narrowing their construction, of invalidating the apprentice's settlement in the parish of *Newark*, by reason that a binding into a parish in the same county would not in that case come within the third section. In the present case, the overseers of the poor of the parish of *Newark* are the overseers of the poor of the parish within which the child was intended to serve the apprenticeship; and, therefore, within the description of the persons entitled to notice, or proof, or admission thereof, within the words of this proviso, though their parish is within the same county with the binding parish. No such notice, or proof, or admission thereof, has been given or made. As they are within the *words* of the proviso, they must, I think, be construed to be within its operation, more especially as such notice might be of importance to the protection both of the apprentice and of themselves, unless a different intent can clearly be collected from the context, or from the scope and objects of the statute. No such different intent can, as it appears to me, be so collected; but in my opinion, an inference to the contrary of such a different intent is to be drawn, the intent being, as far as I can collect it, that notice should be given to the overseers of the parish in which it is intended the child should serve, in all cases, whether the binding be into the same or into a different county. I have considered this case in a great measure without regard to the circumstance of the binding being into a different exclusive jurisdiction, treating it only as a binding into the same county, and as if the third section had the effect of rendering that circumstance of another local exclusive jurisdiction immaterial, though it may be questioned whether the third section by its making a binding by the county magistrates valid, so as to dispense with the allowance of the local magistrates, would have the effect also of dispensing with notice to the overseers in such a case if such notice would otherwise be requisite. But in the view I have taken of the case, it has become unnecessary for me to consider that point. For the above reasons, I think that a settlement in this case has not been gained in the parish of *Newark-upon-Trent*. *Bayley* J. I agree in opinion with my two learned brothers. It is unnecessary for me to discuss the question at any length, after the judgments delivered by them. The first section of the statute applies generally to all cases, and directs the duties the justices are in *all* cases to perform. It imposes no qualification as to the justices, and contains no restrictions except as to the distance of the master's residence or business. The second section introduces two provisions, one to exclude justices who

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may be interested, the other to require a notice to the overseers of the parish in which the service is to be; but whether these provisions, or either of them, are general, applicable to all cases, or confined to particular cases contemplated by the earlier part of the section, admits of doubt. The nature of the provisions has a tendency to show that they are general, their position in the act the contrary. But whether they are general or not, if this case is within the earlier part of the second section, and not taken out of it by the third section, they apply to this case. The earlier part of the second sec ion contemplates two cases, first, where the master's residence or business is in a different *county or jurisdiction* from that of the binding parish; and, secondly, other cases where the justices for the *district or place* in which the binding parish is, shall not have jurisdiction; and in either of those cases it provides, that the indenture shall be allowed as well by two justices for the *county or district* in which the binding parish is, as by two justices of the *county or district* within which such child shall be intended to serve. The binding parish here is in the county of *Nottingham;* the parish in which the service is to be in the town of *Newark*, where the county magistrates have no jurisdiction. The master's business, therefore, is in a different jurisdiction from that of the binding parish, so as to bring this case in words within the first class of cases mentioned in the second section, and the justices of the place in which the binding parish is, have not jurisdiction, so as to bring it also in words within the second class of cases in the second section. And there is nothing, as far as I can judge, in principle, or in the other provisions of this act, to exclude it. The provisions to exclude interested magistrates, and to obtain the information which the overseers may be enabled to give, are calculated to promote the object of the act to secure proper, disinterested, and unexceptionable bindings, and to place magistrates in the place of the parent, and to put them in possession of whatever knowledge may be desirable to influence their discretion; and the greater the number of cases to which these provisions are extended, the more the object of the act will be advanced. Is there any thing then, upon principle, which should exclude this case from the protection of the second section, or are there any words in that clause which show with such certainty as to furnish a ground for judicial decisions, it was not intended to include it? As the object of the whole act is to give protection to the helpless, and to introduce guards to prevent abuse, such a construction should, upon principle, be given to the act as will extend that protection to every object to which the words would extend it, and to introduce those guards as extensively as the words will allow, and the exclusion of interested judges; and the chance of obtaining useful information should be applied to every case to which the words of the provision will warrant its application. Are there any words then in this clause which will justify us in saying, it was not intended to include this case? The only ground upon which, as it seems to me, any question can be raised upon this point, is this; the variation of phrase with regard to the justices; § 1., speaking of justices of peace for the "county, riding, division, or place;" and § 2., in one instance, of justices of the "district or place," in others, of the justices of the "county or district," and in one, of

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justices of the "county," only; but whether this variation is intentional or accidental I cannot discover, and the language appears to me to be too loose to be a foundation upon which a court of justice can act. I therefore conclude, that this case will fall within the second section, unless it is taken out of it by the third section. That section provides, that an allowance of two justices for the "county," dropping the words "district or place," in which the place of service is situate, shall be valid, though that place is within a town or liberty of exclusive jurisdiction. It does not state that such a town or liberty shall, for the purposes of this act, be deemed part of the county in which such town or liberty is situate, but that the allowance of two justices of the binding county shall be valid. It does not supersede in words the excluding restriction, that the justices shall not be of the same business, nor does it in terms dispense with the notice to the overseers, and it seems to me, the true construction of § 3. is, that in cases like the present, to which § 2. and 3. both apply, the allowance by the original magistrates, according to § 1., shall not alone be sufficient, unless they are exempt from the exclusion of § 2., as being magistrates of the same business with the intended master, and unless notice has been given to the overseers of the poor of the place in which the service is to be. If the service is to be in the county from which the binding is to be, the justices of that county may, from the business which comes before them as magistrates, be supposed to be sufficiently acquainted with the circumstances of every part of their own county to make information by overseers unnecessary; but this may not be the case in places of exclusive jurisdiction, though within their own county, because, in their character of magistrates, they can have no knowledge of the local circumstances of such places. I am therefore of opinion, that in this case there ought to have been a notice to the overseers of the parish in which the service was to be, and that for want thereof, no settlement was gained under these indentures.—*Abbott* C. J. I have the misfortune to differ from my learned brothers on the present occasion; and notwithstanding my great and unfeigned reverence for their opinions, I still think that a settlement was gained in *Newark* under the circumstances of this case. It is not necessary to repeat the facts. The case arises upon stat. 56 *G.* 3. *c.* 139. It is enacted by the fifth section of that statute, that no settlement shall be gained by the apprentice, unless such order shall be made, and such allowances of the indenture signed, as are directed by the statute. As to some of the directions, the statute is introductive of a new law; and as a non-compliance with its directions will prevent the gaining of a settlement, I apprehend that, according to general principles, the construction of the statute must not be carried beyond the plain and obvious meaning of the language of the directions, upon any supposition that a case, not within such meaning, may be within the mischief intended to be remedied, or within the reason upon which the direction may be supposed to have been enacted. Those directions may, in my opinion, properly be considered as divided into two classes; those of the first class applying to every case of the binding of a parish apprentice; and those of the second class confined to certain particular bindings, with reference to the local authority of the justices of the peace. I consider all

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the directions of the first class to be placed together in order, and printed as the first section of the statute; and those of the second class to be in like manner placed together in order, and printed as the second section of the statute; and I consider the third section as explanatory only of the jurisdiction of the justices. The directions of the first class are three-fold; first, the duty of the justices to enquire into the particulars of distance and other matters wherein the interest of the apprentice is concerned; 2dly, if the justices upon enquiry approve of the binding proposed by the parish officers, to make an order authorising the officers to bind the apprentice as proposed: this order is, by the statute made the warrant to the officers for the binding, and it must be referred to in the indenture by its date and the names of the justices; 3rdly, the signature of the allowance of the indenture by the justices after the order made, and before the execution of the indenture by any of the other parties thereto. These directions apply to every case of every binding, without regard to the jurisdiction within which the master's parish may be situate; and they are followed by a proviso applicable to them, not containing any general regulation as to the binding of an apprentice to be employed in another county; but prohibiting a binding for employment in another county at a greater distance than forty miles from the parish to which the apprentice belongs, unless such parish be more than forty miles from *London;* in which latter case the justices, on a binding to a distance exceeding forty miles, are to make a special order specifying the grounds on which they think fit to allow a binding to the greater distance. Thus far, all the enactments regard only the justices of the county to which the apprentice belongs; and whether we attend to the comprising of the whole in one numbered section, or disregard that circumstance and attend only to the order and disposition of the sentences, which is the more correct mode of reading an act of parliament, the effect will be the same. I come now to the second class, which, as before observed, I consider to be placed together in and printed as the second section of the act. By this section it is further enacted, "that in all cases where the residence or establishment of business of the person to whom any child shall be bound, shall be within a different county or jurisdiction of the peace from that within which the place by the officers whereof such child shall be bound, shall be situate; and in all other cases, where the justices of the peace for the district or place within which the place, by the officers whereof such child shall be bound, shall be situate, and who shall sign the allowance of the indenture by which such child shall be bound, shall not have jurisdiction, every indenture by which such child shall be bound, at any time after the said first day of *October*, shall be allowed as well by two justices of the peace for the county or district within which the place, by the officers of which such child shall be bound, shall be situate, as by two justices of the peace for the county or district within which the place shall be situate wherein such child shall be intended to serve." This is an *enactment*, the sentence that immediately follows begins with the word "provided," a word properly applicable to qualify some antecedent matter. I think the enactment plainly requires a twofold allowance, and by two distinct

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authorities. The words, "who shall sign the allowance of the indenture by which such child shall be bound," considering the place in which they are here introduced, convince my mind that the things required by this enactment are to be done after the allowance required, in the first instance, for the binding, and by different persons. The enactment applies to the binding into a "different county or jurisdiction of the peace;" it seems to have been thought, that if those words had stood alone, a doubt might be raised whether the word "jurisdiction" would apply to a town or place, parcel of a county, but whose justices have a jurisdiction excluding the authority of the justices of the county wherein it is situate; and to prevent this, there is mention, as it were, of another class of cases, viz. those wherein the justices who shall sign the allowance shall not have jurisdiction. It is to be observed, that bindings under this act are not of that class which is compulsory upon the master, so that, as far as regards him and his place of residence, the allowance of the binding in the first instance by the justices is not properly the exercise of a local authority. By this enactment, if it be not afterwards controlled, a twofold allowance will be requisite whensoever the master's parish and the parish of the apprentice happen to be under the general jurisdiction of different justices; and the second allowance must be by the justices of the local district within which the master's parish is situate, whether that parish be in the same county as the parish of the apprentice, or in a different county: if the two parishes happen to be in the same county, and the parish of the apprentice is in a local district, and that of the master in the county at large, the second allowance must be by the justices of the county. It is clear, however, that some qualification is introduced as to this matter by the third section; but before I notice that more particularly, it is fit to advert again to the second section. The part of that section following the enactment before detailed, begins, as I have observed, with the word "provided." It runs thus: "Provided always that no indenture shall be allowed by any justice of the peace for the county into which such child shall be bound, who shall be engaged in the same business, employment, or manufacture, in which the person to whom such child shall be bound, shall be employed." This proviso appears to me to relate only to those cases which form the subject of the enactment immediately preceding, as well by reason of its position in the statute, as of the expression, "into which such child shall be bound," which I consider to denote plainly a county different from that to which the child belongs, and *in which* the binding by the discretion of the justices is made. The following words are introduced by the conjunction "and," which is properly applicable to connect them with the preceding words, and so connecting to confine them to the cases mentioned immediately before: the following words are, "And notice shall be given to the overseers of the poor of the parish or place in which such child shall be intended to serve an apprenticeship, before any justice of the peace for the county or district within which such parish or place shall be, shall allow such indenture; and such notice shall be proved before such justice shall sign such indenture, unless one of such overseers shall attend such justice and admit such notice." If the act had

nothing further on the subject of the jurisdiction of justices, I cannot satisfy my mind that it would have been ever thought that the whole matter of this second section of the act was not confined to those cases in which an allowance of the indenture by justices of two distinct jurisdictions was required. And it seems to me, that the doubt has arisen from the matter contained in the third section of the act. This section begins also with the word "provided," and it appears to me a continuation of the second section, and a further qualification of those cases and those alone, which form the first part of the section, viz. the cases of different jurisdictions o' justices. It is in these words, "Provided always, and it is hereby declared, that the allowance of two justices of the peace for the county within which the place *in which* such child shall be intended to serve an apprenticeship shall be situate shall be valid and effectual, although such place may be situate in a town or liberty within which any other justices of the peace may, in other respects, have an exclusive jurisdiction." I consider this section to give the jurisdiction to the county justices, whether the town or liberty be within the county to which the master alone belongs, or the county to which both the master and the apprentice belong, but to give it only as it regards the master's parish; so that if a child belonging to a town or liberty is to be bound to a master residing out of the town or liberty, the inquiry in the first instance as to the fitness of the proposed master and the order for the binding, and the first allowance of the indenture, must be by the justices of the town or liberty: and applying this section to the case now before the Court, I think the question is the same as it would be if the town of *Newark* had no local justices. And then the question will be, whether upon a binding to a master residing in the county to which the child belongs, notice of the binding must be given to the overseers of the master's parish. I have already observed upon the order in which this clause requiring notice stands in the act, and its connection by the copulative "and" with the sentence next before it, and have said, that I consider that sentence, also, as relating only to the justices of what I may call the second jurisdiction. If it had been intended that notice should be given to the overseers of the master's parish in all cases, I cannot forbear thinking, that this would have been effected by some distinct enactment, and not by words immediately following and connected in language with an enactment regarding certain cases only. I cannot say that I have found any reason for thus expressly requiring the notice to the parish officers, where the binding is into another county, which may not be urged with almost equal force to a binding in the same county. But it is to be observed, that the legislature has, in the first section, expressly directed the justices of the apprentice's county to enquire into the fitness of the proposed master and the distance of his residence; and I presume it was thought, that where the discharge of this prescribed duty should appear to the justices to require a notice to the officers of the master's parish, they would require such notice to be given, whereas no special duty is imposed by the act on the justices of the master's county; and, as I construe the act, there is a special qualification respecting those justices in regard to their business or manufacture; and the notice may therefore have been required in this

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case, as well for the purpose of supplying the place of that enquiry which is enjoined in the other, as for security against the allowance of the indenture by any justice of the same business as the master. I think, also, that if such an intention had been entertained by the legislature, the sentence requiring notice would have contained some words denoting that the notice was to be given, whether the master's parish was in the same county as the apprentice's, or in a different county; and if the master's parish was in the same county, then that the notice should be given before making the order for the binding, which is the important act, and not merely before the allowance of the indenture, which is only a ministerial act, as it respects the justices who have made the order; for I think it cannot have been intended that the same justices should make an enquiry and then an order for the binding, and afterwards give an opportunity for the officers of another parish to attend before them, who might induce them to rescind their order. If notice to such officers and proof thereof were to be required, I think they ought to be required in the first instance, and before making the order. If the notice is confined to the allowance of the indenture by the justices of another county, it is required before any act is to be done by them. The notice is certainly required only with reference to an allowance of the indenture by the justices of the master's county. If it is required where that county happens to be the same as the county of the apprentice, then, as I have before observed, it will be required before an allowance by the binding justices in some cases and not in others, and this will not be distinctly shown by the statute; whereas, according to my construction of the statute, the several matters required of the justices of the two distinct jurisdictions will be detailed in a plain and intelligible order, without any confusion of arrangement or perplexity of language. For these reasons, I am of opinion that the notice is not required where the apprentice and his master reside in the same county. The statute upon which the question has arisen is certainly not free from ambiguity. I have already noticed, that if its requisitions are not complied with, a settlement cannot be gained, under circumstances in which it might have been gained before the passing of the act; and I have thought myself bound to decide upon that which I deem to be the true sense and meaning of the words of the statute, regard being had to the order and arrangement of its matter; and I have the satisfaction of knowing, that if my construction be erroneous, the error is of no practical importance, because the opinion of my learned brothers must prevail, and the rule for quashing the order of sessions must be made absolute.—Order of sessions quashed.

Churchwardens.

[*Vide ante*, p. 608.]

Again in *Lanchester* v. *Frewer*, *M.* 1824. 2 *Bingh.* 361. The facts were that twenty parishioners joined at a vestry in signing an order for the repairs of the church, and one of them, a churchwarden, paid the artificers, but the rate for reimbursing him was quashed. The Court of C. P. decided that he could not sue the persons who signed the order for contribution.

Commitment.

[*Vide ante*, p. 678.]

Immediately before *R.* v. *Evered.*

Variance from conviction.

A conviction for an offence differing from that recited in the commitment will not justify imprisonment under the latter, *Rogers* v. *Jones*, *M.* 1824. 3 *B.* & *C.* 409. (See this case, *tit.* Justices of Peace. Vol. III. Addenda.)

END OF THE FIRST VOLUME.

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